

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the District of Columbia		
Indictment	A	1
Motion to dismiss indictment	D	3
Motion for bill of particulars	G	5
Motion for hearing on qualifications of grand jurors	H	6
Order denying motion to dismiss indictment, mo- tion for bill of particulars and motion for hear- ing on qualifications of grand jurors	J	7
Judgment	K	8
Transcript of trial proceedings, October 14, 15, 16, 17, 18, 1963	1	9
Appearances	1	9
Colloquy between counsel re offers in evidence	10	9
Reading of testimony of Frank S. Tavenner from the Supreme Court Record No. 128, October Term, 1961	91	13
Portions of testimony of Mrs. Dorothy K. Funn read into record	112	26

Record from the United States District Court for the District of Columbia—Continued		
Transcript of trial proceedings, October 14, 15, 16, 17, 18, 1963—Continued		
Reading of testimony of Frank S. Tavenner from the Supreme Court Record No. 128, October Term, 1961—Continued		
Portions of testimony of John T. Gojack read into record	122	32
Reading of testimony of Frank S. Tavenner from the Supreme Court Record, No. 128, October Term, 1961—		
(resumed)	139	42
Portions of testimony of John Thomas Gojack read into record	145	44
Portions of testimony of Russell Nixon read into record	218	74
Portions of testimony of John T. Gojack read into record	222	76
Reading of testimony of Frank S. Tavenner—cross examination from the Supreme Court Record No. 128, October Term, 1961—		
(resumed)	232	83
recross	262	95
Portions of testimony of Julia Jacobs read into record	289	96
Testimony of Donald T. Appell—		
direct	322	100
cross	329	104
Court's statement on motion of the defendant for judgment of acquittal	340	109
Reading of testimony of Robert Elliott Thompson from the Supreme Court Record No. 128, October Term, 1961 into record—		
direct	343	111
cross	347	114
recross	357	120
redirect	361	122

	Original	Print
Record from the United States District Court for the District of Columbia—Continued		
Transcript of trial proceedings, October 14, 15, 16, 17, 18, 1963—Continued		
Reading of testimony of Frank S. Tavenner from the Supreme Court Record No. 128, October Term, 1961 into record—		
direct	363	123
Colloquy between court and counsel re Government's Exhibits Nos. 5 and 7	375	131
Reading of testimony of George David McClaren from the Supreme Court Record No. 128, October Term, 1961 into record—		
direct	380	134
Colloquy between Court and counsel re Defendant's Exhibits Nos. 3 and 3-A	385	137
Reading of testimony of George David McClaren from the Supreme Court Record No. 128, October Term, 1961 into record—		
(resumed)	393	141
Reading of excerpts from various sources into record from the Supreme Court Record No. 128, October Term, 1961	395	142
Extracts from The Congressional Record for Honorable H. R. Gross, Subject: Herman F. Reissig, dated May 24, 1954 from the Supreme Court Record No. 128, October Term, 1961 read into the record	446	170
Defendant's Exhibit 6—Statements in the press attributed to Representative Harold H. Velde, former Chairman of the House Un-American Activities Committee, etc.	456	177
Reading of testimony of Thomas I. Emerson from the Supreme Court Record No. 454, October Term, 1961 into record and colloquy thereon	461	181
Court's findings, October 28, 1963	507	206

Record from the United States District Court for
the District of Columbia—Continued

Transcript of trial proceedings, October 14, 15,
16, 17, 18, 1963—Continued

GOVERNMENT'S EXHIBITS:

No. 4—Excerpts from the minutes of an executive meeting of the Committee on Un-American Activities held January 20, 1955 with Certification by the Recording Clerk	513	209
No. 5—Excerpts from the minutes of an executive meeting of the Committee on Un-American Activities held February 9, 1955 with Certification by the Recording Clerk	516	211
No. 7—Excerpts from the minutes of an executive meeting of the Committee on Un-American Activities held February 23, 1955 with Certification by the Recording Clerk	519	213
No. 12—Investigation of Communist Activities in the Fort Wayne, Ind., Area, February 28, March 1 and April 25, 1955 (excerpts)—Hearings before the Committee on Un-American Activities, House of Representatives, Eighty-Fourth Congress, First Session	522	216
Testimony of Julia Jacobs, Accompanied by her Counsel, Frank J. Donner— resumed	527	221
Testimony of Lawrence Cover, Accompanied by his Counsel, Frank J. Donner	534	227
Testimony of John Thomas Gojack, Accompanied by his Counsel, Frank Donner	544	241
Testimony of David Mates, Accompanied by his Counsel, Basil R. Pollitt	630	381
Testimony of Eugene Maurice Shafarman, Accompanied by his Counsel, David Rein	643	395

INDEX

v

Original Print

Record from the United States District Court for the District of Columbia—Continued		
Transcript of trial proceedings, October 14, 15, 16, 17, 18, 1963—Continued		
GOVERNMENT'S EXHIBITS—Continued		
Nos. 14 & 14A—Correspondence between William S. Hitz and David Rein, dated April 30 and May 16, 1963 re Stipulations agreed upon for the trial, etc. _____	649	401
DEFENDANT'S EXHIBITS:		
No. 1—Statement of objections to hearing and motion to vacate subpoenas submitted by Frank J. Donner with attachments _____	653	405
Newspaper clipping from February 15, 1955 issue of Fort Wayne Journal-Gazette, of article by Robert E. Thompson with heading "House Un-American Committee Wants UE 'Out of Business'" _____	655	407
Newspaper clipping from February 21, 1955 issue of The Herald-Press, St. Joseph, Michigan of article headed "Red Probe May Upset UE Vote" _____	656	408
No. 3—Information from the Files of the Committee on Un-American Activities, U.S. House of Representatives, Subject: John Thomas Gojack, dated May 5, 1953 _____	657	409
No. 4—Information from the Files of the Committee on Un-American Activities, U.S. House of Representatives, Subject, John T. Gojack for Honorable Homer Ferguson, dated August 20, 1953 _____	660	415
Proceedings in the United States Court of Appeals for the District of Columbia Circuit _____	664	419
Opinion, Per Curiam _____	664	419
Opinion, concurring in the result, Burger, J. _____	669	423
Judgment _____	670	424

	Original	Print
Petition for rehearing	671	425
Order denying petition for rehearing	684	435
Clerk's certificate (omitted in printing)	685	435
Order extending time to file petition for writ of certiorari	686	436
Order allowing certiorari	687	437

[fol. A]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Holding a Criminal Term

Grand Jury sworn in on September 4, 1962

Criminal No. 821-62

Grand Jury Original

2 U.S.C. 192

UNITED STATES OF AMERICA,

v.

JOHN T. GOJACK.

INDICTMENT—September 4, 1962

Introduction

The Committee on Un-American Activities of the House of Representatives, created and authorized by the Legislative Reorganization Act of 1946, Section 121(q), (60 Stat. 828), and by H. Res. 5, 84th Congress, at a meeting on February 9, 1955, by motion agreed to, authorized defendant Gojack to be subpoenaed to appear before a Subcommittee of the Committee in open hearing at Fort Wayne, Indiana. The subject of these hearings was Communist Party activities within the field of labor, being a subject and question of inquiry within the scope of the authority of the Committee. On February 9, 1955, the Chairman of the Committee, pursuant to his authority granted by Committee resolution of January 20, 1955, appointed a Subcommittee to conduct the aforesaid hearings and set the time at February 21, 1955. Upon the request of the defendant herein for a postponement, the Chairman, on February 18,

1955, continued the aforesaid hearings until February 28, 1955, in Washington, D. C., which rescheduling was approved by the Committee on February 23, 1955.

[fol. B] On February 28 and March 1, 1955, in the District of Columbia, the last aforesaid Subcommittee was conducting hearings under the appointment and authorizations, and upon the subject and question of inquiry, set forth above, and, then and there, defendant John T. Gojack appeared as a witness before that Subcommittee and was asked certain questions pertinent to the above subject and question under inquiry, which pertinent questions he deliberately and intentionally refused to answer.

The allegations of this Introduction are adopted and incorporated into the Counts of this Indictment which follow, each of which Counts will in addition merely set forth the particular date and pertinent question which was asked of the defendant and which he so refused to answer.

Count One

On February 23, 1955. Question:

Are you now a member of the Communist Party?

Count Two

On March 1, 1955. Question:

You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.

Count Three

On March 1, 1955. Question:

Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?

[fol. C]

Count Four

On March 1, 1955. Question:

May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?

Count Five

On March 1, 1955. Question:

Did you take active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?

Count Six

On March 1, 1955. Question:

What method was used to get you as an original sponsor?
[That is, original sponsor of the American Peace Crusade.]

....., United States Attorney in and
for the District of Columbia.

A True Bill:

....., Foreman.

[fol. D]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS INDICTMENT

The defendant moves that the indictment be dismissed on the following grounds:

1. The Legislative Reorganization Act of 1946 Section 121(q), 60 Stat. 828 and House Resolution 5, 85th Congress, purport to authorize the House Committee on Un-American Activities to conduct investigations into the exercise of the

freedom of belief, speech, press and assembly, as to which the First Amendment to the Constitution of the United States provides that "Congress shall make no law" and such resolution and statute are therefore unconstitutional.

2. The statute and resolution referred to above are vague and indefinite and the Committee's inquiry thereunder may not be a basis for indictment by reason of the requirements of the Fifth and Sixth Amendments of the Constitution.

3. The statute and resolution referred to above authorize investigations without a legislative purpose in violation of the principle of the separation of powers.

4. The questions set forth in the indictment constitute an inquiry into defendant's personal and private affairs and associations and into his political beliefs and associations which are subjects beyond the jurisdiction of the Committee on Un-American Activities under the First [fol. E] and Tenth Amendments to the Constitution and under the statute and resolution above referred to.

5. The questions set forth on its face cannot be pertinent or material to any subject under the jurisdiction of the House Committee on Un-American Activities within the statute and resolution above referred to.

6. The questions set forth are on its face not pertinent to the questions under inquiry set out in the indictment.

7. The indictment fails to set forth the basis or the matter in which the question is alleged to be pertinent to the subject under inquiry set out in the indictment.

8. The indictment fails to allege a state of mind requisite for guilt under Title 2, Section 192.

9. The indictment does not state facts sufficient to constitute an offense against the United States.

10. The indictment was not found by a sufficient number of qualified and unbiased grand jurors.

11. The indictment was returned more than five years after the alleged offense and is accordingly barred by the statute of limitations.

12. The indictment subjects the defendant twice to be put in jeopardy for the same offense.

13. The indictment denies the defendant the right to a speedy and public trial.

Frank J. Donner, David Rein, Attorneys for Defendant.

[fol. F] Certificate of Service (omitted in printing).

[fol. G]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR BILL OF PARTICULARS

The defendant moves that the Court order the United States to file a bill of particulars setting forth the following:

1. The manner in which the questions set forth in the indictment is alleged to be pertinent to the subject under inquiry set out in the indictment.

2. When, where and how the defendant was advised of the pertinency to the subject matter of the indictment of the questions set forth in the indictment.

Frank J. Donner, David Rein, Attorneys for Defendant.

Certificate of Service (omitted in printing).

[fol. H]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR HEARING ON QUALIFICATIONS OF GRAND JURORS

The defendant moves that a hearing be held for the purpose of inquiring into the qualifications of the members of the grand jury which returned the indictment herein. As grounds for this motion defendant states:

1. Eleven of the twenty-three members of the grand jury were government employees and others who are listed as retired may have been government employees and still other members may have been spouses, children or parents of government employees. Among the government employees on the grand jury are employees of sensitive agencies such as the Central Intelligence Agency, the Department of Navy, and the Atomic Energy Commission.

2. Defendant desires the opportunity to establish at the hearing that the grand jurors referred to were, by reason of their governmental connections, unsuitable as grand jurors personally and as a class, and that as a result of their presence, the grand jury was not an independent body for the purpose of determining whether to indict the defendant but instead was for that purpose under the domination and control of the prosecution.

If the hearing sought is denied, defendant moves for a hearing for the purpose of interrogating the government [fol. I] employees on the grand jury to determine whether they were personally biased against the defendant and unable to exercise an independent judgment in this case.

In support of this motion, defendant refers to the annexed list of the members of the grand jury which returned the indictment herein and to the following material:

An article written Drs. Jahoda and Cook, *Security Measures and Freedom of Thought*, 61 Yale L.J. 295, and the affidavits filed by Dr. Cook, Joseph Fanelli, Murray Gordon, and Gerhard P. Van Arkel in the case of *United States v. Martin Popper*, Criminal No. 1053-59 and which are hereby incorporated by reference.

Frank J. Donner, David Rein, Attorneys for Defendant.

Certificate of Service (omitted in printing).

[fol. J]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER DENYING MOTION TO DISMISS INDICTMENT, MOTION FOR BILL OF PARTICULARS AND MOTION FOR HEARING ON QUALIFICATIONS OF GRAND JURORS—January 25, 1963

Upon consideration of the motions and the oral arguments made thereon, it is by the Court this 25th day of January, 1963,

Ordered that defendant's motion to dismiss the indictment, motion for hearing on the qualifications of grand jurors, and motion for a bill of particulars be denied.

George L. Hart, Jr., Judge.

No objection as to form, David Rein, attorney for defendant.

[fol. K]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Criminal No. 821-62

UNITED STATES OF AMERICA,

v.

JOHN T. GOJACK.

JUDGMENT—December 13, 1963

On this 13th day of December, 1963, came the attorney for the government and the defendant appeared in person and by counsel, David Rein, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of

CONTEMPT OF CONGRESS

Violation of Section 192, Title 2, U.S. Code

as charged

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Three (3) Months and to pay a fine of Two Hundred (\$200.00) Dollars.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Richmond B. Keech, United States District Judge.
 -----, Clerk.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA
 Criminal Case No. 821-62

UNITED STATES OF AMERICA,

VS.

JOHN T. GOJACK.

Transcript of Trial Proceedings—
 October 14, 15, 16, 17 & 18, 1963

Washington, D. C.
 10:30 a.m.

Before the Honorable Richmond B. Keech, United States District Judge, Trial before the Court.

APPEARANCES:

William Hitz, Esq., on behalf of the Government.

David Rein, Esq., and Frank Donner, Esq., for the defendant.

• • • • •

[fol. 10] Mr. Hitz: I might say it is the practice of the Un-American Activity and has been since its creation, that unless there is a proper quorum of the full committee sitting, that it will sit in sub-committees.

I may say, by way of illustration, that is not what occurs in the Senate Internal Security Sub-Committee doing similar work. They sit in a short quorum, if need be, of the full sub-committee. They don't appoint a sub-committee of the sub-committee.

.

[fol. 74] Mr. Donner: No objection to this exhibit but—well, there is an apparent—there is a statement that this reference to a subcommittee—the committee on Internal Securities in the resolution, Your Honor, and I don't know what that is about but I have no objection to the exhibit otherwise. That is No. 5.

.

[fol. 78] Mr. Hitz: I next pass to the court government exhibit five in evidence and that is excerpts of the minutes of February 9, 1955, of the Executive meeting of the Un-American Activities Committee which states that there were seven members present and I will read this.

[fol. 79] Mr. Donner: Read it slowly.

Mr. Hitz: "Mr. Scherer moved that David Mates and John Gojack be subpoenaed to appear before a subcommittee of the committee on Internal Security in open hearing at Fort Wayne, Indiana, and that a Dr. Sharpman be subpoenaed to appear in the Executive Session at Fort Wayne, Indiana.

"The Chairman designated Mr. Moulder, Mr. Dole and Mr. Scherer as a subcommittee to conduct the hearings in Fort Wayne, Indiana, and set the time at February 21, '55."

I have read the body of the excerpt.

It might be helpful to the court, although—yes, it might be helpful to the court if I point out that it is relevant and material to several of the allegations of Paragraph 1 of the Introduction of the indictment.

.

[fol. 80] Mr. Hitz: Next I pass to the court government exhibit No. 7 in evidence and that being excerpts from the minutes of the Executive Meeting of the Committee on February 23, which is rather brief and I will read it rather than characterize it.

It notes that there are five members of the Committee present and the body of this excerpt is as follows: "The hearings scheduled to be held at Fort Wayne, Indiana, were discussed. The chairman stated that upon learning that a National Labor Board election was to be held in Fort Wayne, Indiana on February 24, he continued the hearings until February 28 and set the place for the hearings in Washington, D. C.

"Mr. Scherer moved that the Committee hold hearings at a subsequent date in Fort Wayne. The motion died for want of a second.

"The Committee agreed that after the hearings on February 28, it would then be determined whether further hearings in Fort Wayne would be necessary."

That is the end of the body of the excerpts from the minutes.

.

[fol. 82] Mr. Donner: Excuse me. Don't you think it would be well for us to file with the court the stipulation that was entered into about the—the record will be made [fol. 83] on the basis of the record made in the old case with the reservations to be made in the stipulation?

Mr. Hitz: I have no feeling either way. We can do it if you want to. This is the appropriate time in my case to do it.

Do you have a copy that can be filed?

Mr. Donner: We have a copy that can be filed together with a copy of your response.

Mr. Hitz: I am agreeable to that and in fact, since it is my case, I will mark it.

Mr. Donner: All right.

Mr. Hitz: Give it No. 14 for identification.

(Government's exhibit No. 14 was marked for identification.)

Mr. Hitz: Also 14-A, Your Honor, which is my reply by way of letter.

(Government's exhibit 14-A was marked for identification.)

Mr. Hitz: I take it, since the request was made by Mr. Donner, that there is no objection and I ask it to be received.

The Court: I understand there is not and 14 and 14-A are received.

(Government exhibits 14 and 14-A were received in evidence.)

[fol. 84] The Court: What is the date of those letters?

Mr. Hitz: Mr. Rein's to me is April 30, '63 and my reply to him is May 16, '63.

Might I ask Mr. Donner if he thinks anything significant in here should be read to the court and the record at this time?

Mr. Donner: In your reply, Mr. Hitz, that is, 14-A, there is a reference, I believe, to Mr. Tavenner's testimony which you are about to—perhaps you ought to read that.

Mr. Hitz: I will be glad to. In fact, I will read my whole letter, Your Honor. I am rather pleased with it.

The Court: I must say, you are one of the few people that are ever pleased the next day with a letter once written.

Mr. Hitz: I wrote it so long ago that I have forgotten what is wrong with it, perhaps, but I will read it and it is addressed to Mr. Rein in his Washington office.

"Dear Mr. Rein:

"Your letter of April 30, 1963, stating proposed stipulations with reference to the impending trial of the above case, is agreeable to me except with respect to "A", and the Herald press clipping referred to therein."

The Court: I did not hear you, sir.

[fol. 85] Mr. Hitz: I should tell the court that Mr. Rein's proposal for a stipulation contained in several numbered paragraphs and some lettered paragraphs underneath—

The Court: Except what, sir?

Mr. Hitz: Except "A", Herald press clipping referred to therein.

As to that, "the government stipulates that it will not question the accuracy of the clipping, rather than that, the government agrees to the accuracy of it.

"With respect to "H", other like documents are to be covered thereby" and now this is what I think Mr. Donner had in mind but I thought I would read it all. "Further, the government stipulates that the testimony of Frank S. Tavenner, Jr., will be admissible as it was given in the previous trial.

"It is understood that neither the government nor the defendant agrees to be limited to only such evidence as is covered by this stipulation."

• • • • •

[fol. 91] Mr. Hitz: "Thereupon, Frank S. Tavenner, was called as a witness by counsel for the Government and, having been first duly sworn, was examined and testified as follows:

"Direct examination.

"By Mr. Hitz:

"Q. Mr. Tavenner, your full name, please?

"A. Frank S. Tavenner, T-A-V-E-N-N-E-R, Jr.

"Q. Your occupation, Mr. Tavenner?

"A. Attorney.

"Q. And with whom?

"A. I am counsel for the Committee on Un-American Activities of the House of Representatives."

• • • • •

[fol. 92] "Q. How long have you been connected with the legal staff of the committee?

"A. Since May 1, 1949.

"Q. Mr. Tavenner, in 1955, how many Members of the House were on the Un-American Activities Committee?

"A. Nine.

"Q. Are you familiar with the fact that John Gojack was subpoenaed to appear before the Un-American Activities Committee in the year 1955?

"A. Yes, I am.

"Q. Was he so subpoenaed?

"A. Yes, sir.

[fol. 93] "Q. Was he subpoenaed to appear more than once—

"A. Yes, he was.

"Q. —in the year?

"Will you tell us on what date, for which date he was first subpoenaed to appear?

"A. On February 15th he was subpoenaed to attend a hearing of the committee on February the 21st at Fort Wayne, Indiana.

"Q. At that time, was Mr. Gojack represented by an attorney, to your information?

"A. Yes, he was.

"Q. Who was that?

"A. Mr. David Scribner.

"Q. Did you receive a communication from Mr. Scribner subsequent to the issuance of the subpoena for Mr. Gojack?

"A. Yes, sir, I did.

"Q. Will you just tell us what it related to?

"A. Well, I first received a— Well, first there was received by the committee a telegram from Mr. Scribner in which he asked that a continuance be granted for the appearance of Mr. Gojack as a witness. That telegram bore date of February 16th. He asked for the hearings to be postponed 'to any time after next week,' because of his [fol. 94] extremely heavy schedule, and also because of NLRB election at Magnavox Company.

"Q. That is, for an extension beyond the week of the 21st?

"A. Yes, sir.

"Q. Was that extension granted, Mr. Tavenner?

"A. Well, on February 17th, the clerk of the committee replied by telegram, advising Mr. Scribner that his application for a continuance would be denied, or was denied. Later on that day, Mr. Scribner called me, and after making some investigation, I found out the situation regarding the proposed election at Magnavox, and I went to the floor of the House and got the chairman of the committee, Mr. Francis E. Walter, from the floor of the House, and after explaining the situation to him, Mr. Walter agreed that the hearings be postponed. I came back to my office and telephoned Mr. Scribner, or maybe I advised him by wire, I am not certain, that the hearings would be continued.

"Q. At that time, did you give Mr. Scribner a date to which they were continued, or merely to tell him that they were continued beyond the week that he wished to be free?

"A. My recollection is that I got word to him in some manner that the hearings would be continued.

[fol. 95] "Q. Subsequently, did you inform Mr. Scribner of the exact date to which they were continued?

"A. Yes, sir. On the same day, February 17, Mr. Scribner wrote me, thanking me for giving favorable consideration to his request for postponement. In this letter he says he confirms

"'our telephone conversation this afternoon, wherein you so advised me and wherein I advised you that Mr. Gojack, who has been subpoenaed, will appear when the hearing is rescheduled.'

"Quoting further from the letter, he states:

"'I assume that you will give me reasonable advance notice of any new scheduled date for the appearance of Mr. Gojack.'

"Q. Did you give notice of the new scheduled date of appearance?

"A. Yes, sir. On the following day I succeeded in having a definite date fixed for the postponed hearing, and I so advised Mr. Scribner by letter; that is, of February 18th. In

that letter I acknowledged receipt of the letter of February 17th from Mr. Scribner, in which, quoting from the letter:

"'You confirm our telephone conversation that you would have Mr. Gojack appear when the hearing is rescheduled [fol. 96] and in which you ask that reasonable advance notice be given you of any new scheduled date for Mr. Gojack's appearance.'

"Continuing to quote from the letter:

"'At the direction of the chairman, I am advising you that the hearing is rescheduled to take place on Monday, February 28, 1955, in Room 225, Old House Office Building, Washington, D.C., at 10:30 a.m.'"

[fol. 97] "Q. Did that end the matter, or was a subpoena issued for the date arrived at?

"A. I decided that inasmuch as the original hearings had been set for Fort Wayne, and that we were now having the hearing in the city of Washington, that I should issue a new subpoena, which I did. That subpoena was issued, I believe, on the 18th of February, and served—the subpoena was issued on the 23rd of February and was served that day, or at least, service of the subpoena was on the 23rd day of February, for Mr. Gojack's appearance in Washington on the 28th day of February.

"Q. All right, sir. Then, he did appear, did he, on the 28th?

"A. Yes, sir.

"Q. Where did he appear before the committee?

"A. In the Old House Office Building in Washington, D.C.

[fol. 98] "By Mr. Hitz:

"Q. Mr. Tavenner, in calling Mr. Gojack as a witness, what field was the committee engaged in investigating at that time?

"A. The committee had been engaged intermittently in the investigation of Communist Party Activities on the part of officials of the United Electrical, Radio and Machine Workers of America, from August 1949 until the date of this hearing, and later. The committee had heard testimony in July 1951 from a former president of District 7, comprising the States of Ohio and Kentucky, in which—

"The Court: District 7 of what?

"The Witness: Of the United Electrical, Radio and Machine Workers of America.

.

"By Mr. Hitz:

"Q. What did that— First, will you name that witness?

"A. Mr. Decavitch.

"Q. Will you spell it for the record, please?

"A. D-E-C-A-V-I-T-C-H.

"Q. When Mr. Decavitch gave his testimony—and you say it was in 1951?

[fol. 99] "A. Yes, sir.

"Q. (Continuing) —had he been a member of the UE union?

"A. Yes, sir, he had been president of District 7 for a number of successive terms.

"Q. Had he been a member of the Communist Party—

"A. Yes.

"Q. —according to his testimony?

"A. Yes.

.

"By Mr. Hitz:

"Q. Mr. Tavenner, did Mr. Decavitch give any testimony with reference to his opinion as to the extent of the infiltration of the UE by the Communist Party? Just answer that he gave an estimate or he did not.

"A. He did.

The Court: What was the basis of his estimate?

"Q. Now, don't answer this until there is time for an objection to be made if they care to make it. In what way did he characterize the extent of the infiltration? Will you answer—

"A. As being 99.9 per cent pur Communist Party members.

"Q. Did you at a subsequent time receive further testimony [fol. 100] from anyone concerning the extent of Communist infiltration of this particular UE, this union?

"A. Yes, sir. There was a witness by the name of Jack Davis who testified before the committee in July 1953 in Albany, New York. He had been an organizer of the Communist Party for that district—excuse me, an organizer for the United Electrical, Radio and Machine Workers for that district, which was District Number 3, comprising the area in the State of New York north of Yonkers.

"Q. Was it public testimony?

"A. Yes, sir.

"Q. According to his testimony, had he ever been a member of the Communist Party, sir?

"A. Yes, sir, he so testified.

"Q. Did he give any estimate of his opinion of the extent of Communist infiltration of the UE? Just answer he gave an estimate or he did not.

"A. He did.

"Q. Would you be good enough to tell us what that estimate was, if you can recall?

"A. He stated that all of the organizers for the United Electrical, Radio and Machine Workers who attended the [fol. 101] meetings of the UE, consisting of twelve, averaging twelve to twenty, were members of the Communist Party.

"Q. Was this a meeting of districts of what type of a meeting?

"A. These were meetings of organizers of the UE, held intermittently at various places in District 3. He testified there were at least five of such meetings.

"The Court: What was the date of his testimony?

"The Witness: July 1953.

"A. (Continuing) He further testified as to—

"The Court: Well, there is no question pending.

"The Witness: Excuse me.

"By Mr. Hitz:

"Q. What else did he testify to?

"A. He testified as to his experience at Lynn, Massachusetts, while still an organizer of the UE.

"Q. Did he give testimony concerning that aspect of it with respect to infiltration by the Communist Party?

"A. He did, but he did not attempt to describe the number of those engaged or the percentage of the employees of UE who he knew to be members of the Communist Party.

"Q. Did he say whether there was infiltration by the Communist Party at that time—

"A. Yes, sir.

"Q. When Mr. Gojack was subpoenaed to appear before the committee, was he or was he not known to be an officer of the UE union?

"A. Yes, sir, he was.

"Q. In what capacity?

"A. I believe—the information that the committee had was that he was a vice president of the national union and a president of his district.

"Q. District what, if you recall?

"A. I believe it was District 9.

"Q. Is that the same national UE union that Mr. Decavitch had testified about, and that Mr. Davis had testified about?

"A. Yes, sir, that is the abbreviation for the United Electrical, Radio and Machine Workers of America.

"Q. Before Mr. Gojack gave his testimony, to your knowledge was the committee possessed of information concerning any possible subversive activities of one Henry Aron, A-R-O-N?

"A. Yes, sir.

• • • • •

"By Mr. Hitz:

[fol. 103] "Q. All right, Mr. Tavenner, would you be—

"A. There is sworn testimony—excuse me, sir.

"Q. Go ahead. There is sworn testimony?

"A. There is sworn testimony in regard to it, but I do not have it with me.

"The Court: Will you bring it down in the morning?

"Mr. Hitz: I have it here. (Handing book to witness)

"The Court: Oh.

"By Mr. Hitz:

"Q. By whom was it given, Mr. Tavenner?

"A. By Mr. Walter Stelle.

"Q. Under oath?

"A. Yes, sir.

"Q. Public hearing?

"A. Yes, sir.

"Q. Of this committee?

"A. Yes, sir.

"Q. What year?

"A. 1947.

"Q. What did he say? Will you turn to it and read it?

"A. This was a list of officers of the Communist Party, [fol. 104] United States of America, introduced in evidence by Mr. Walter Steele in the course of his testimony before the Committee on Un-American Activities on July 21, 1947.

"Q. In what city? Did you tell us it was Washington, or—?

"A. Washington, D. C., in the House of Representatives.

"'District of Indiana, State of Indiana, Chairman'—Excuse me, what name did you ask me for?

"Q. Henry Aron.

"A. 'Secretary, Henry Aron.'

"Q. That is, secretary of the Communist Party for that district?

"A. Yes, sir.

"Q. Did the committee, to your knowledge, have any information concerning subversive activities of Elmer Johnson at the time that Mr. Gojack gave his testimony that is in question here?

"A. Yes, sir.

"Q. Was it received in a session before the committee?

"A. Yes, sir.

"Q. Under oath?

"A. Yes, sir.

[fol. 105] "Q. Who gave it?

"A. Mr. Walter Steele.

"Q. The same man who talked about Aron?

"A. Yes, sir.

.

"By Mr. Hitz:

"Q. What information did the committee receive from Mr. Steele on the question of subversive activities of Elmer Johnson, at the time you have indicated?

"A. Mr. Elmer Johnson was chairman of the district of Indiana, Communist Party.

"Q. What year?

"A. That testimony was given in 1947.

"Q. No, I mean, that Johnson was chairman of the Indiana Communist Party for what year.

"A. (Inspecting document.)

"Q. Was it the same year that Aron was—

"A. Yes, it was.

"Q. —named as secretary?

"A. (Still inspecting document) I would have to read considerable testimony to fix the exact year.

"Q. Would you endeavor to do that?

[fol. 106] "A. You mean for me to do it now?

"Q. Yes, please.

"Mr. Donner: What is the pending question?

"Mr. Hitz: For what year did Mr. Steele give his testimony concerning Elmer Johnson?

"Mr. Donner: All right.

"The Court: I thought he said 1947.

"Mr. Hitz: He gave it to—Mr. Steele gave the testimony in 1947, but I wanted to find out to what year it related with respect to—

"The Court: That is another matter.

"A. (After inspecting document further) The testimony does not refer to any year, but it speaks in the present tense, in this sense. It refers to the positions—Mr. Steele referred to the positions that the individuals 'hold' in the Party.

"By Mr. Hitz:

"Q. All right, sir.

"A. And the addresses of the national and state headquarters thereof.

"Q. When Mr. Gojack testified before the committee at the time in question here, was the committee, to your [fol. 107] knowledge, possessed of any information concerning subversive activities by the American Peace Crusade?

"A. Yes.

.

"By Mr. Hitz:

"Q. Mr. Tavenner, in what fashion was the American Peace Crusade listed in the document of the committee that you have already referred to?

"A. It is listed in the guide to subversive organizations of the committee as a Communist front organization. I am not certain that I have the exact language.

"Q. Is that in the guide?

"A. Yes, sir.

"Q. Here is it. (Handing pamphlet to witness)

"A. It is cited by the congressional committee on Un-American Activities on February 19, 1951, as an organization which the Communists established as a new instrument for peace offensive in the United States, and which was heralded by the Daily Worker with the usual bold headlines 'reserved for projects in line with Communist objectives.' That was the citation.

"Q. Now, under what subject of that particular publication, the guide, under what subject is the American Peace [fol. 108] Crusade listed?

• • • • •

"A. It is listed as one of the front organizations.

"By Mr. Hitz:

"Q. Now, what is a front organization? What did it then mean to the committee?

"A. A front organization—

• • • • •

"A. A front organization means an organization in the United States other than a Communist action organization, which is substantially directed, dominated or controlled by a Communist action organization, and is primarily operated for the purpose of giving aid and support to a Communist action organization, a Communist foreign government, or the world Communist movement. (Reading)

• • • • •

"By Mr. Hitz:

"Q. Now, is it your testimony that the committee was possessed of information that the Communist Peace Crusade was or was not such an organization?

"Mr. Donner: I believe you meant American Peace Crusade, isn't that correct?

[fol. 109] "Mr. Hitz: What did I say?

"Mr. Donner: Communist.

"Mr. Hitz: I'm sorry.

"By Mr. Hitz:

"Q. (Continuing) —that the American Peace Crusade was or was not such an organization?

"A. Yes, sir.

"Q. That it was which?

"A. That it was such an organization.

"Q. Before Mr. Gojack's testimony was given?

"A. Yes, sir.

• • • • •
 "By Mr. Hitz:

"Q. Mr. Tavenner, I think we had gotten to the point where we were discussing what information was in the hands of the committee, to your knowledge, concerning the American Peace Crusade, and I think you had testified that it was listed in a publication of the committee published prior to the testimony of Mr. Gojack, which publications was entitled, 'A Guide to Subversive Organizations,' as a Communist front organization. Is that right, sir?

"A. Yes, sir.

"Q. And then you had read the definition that is contained [fol. 110] in that document of what a Communist front organization is.

"A. Yes, sir.

"Q. With that background, I wonder if you would tell us what information the committee had of public record, to your knowledge, concerning a connection if any between Mr. Gojack and that organization. And I would like to hand you the volume containing the reports of the hearings, of part of them, for the year 1951 and ask you to refer to House Report 378 and tell us whether in that report there is any factual matter concerning a possible connection between Mr. Gojack and the American Peace Crusade. Just answer yes or no.

"A. Yes, there is.

"Q. Would you be good enough to give us the name and the date of the report?

"A. The name of Mr. John Gojack—

"Q. No, the name and the date of the report.

"A. Oh, of the report.

• • • • •

[fol. 111] "(Continuing) This is 'Report on the Communist "Peace" Offensive—A Campaign to Disarm and Defeat the United States.'

"By Mr. Hitz:

"Q. And the date?

"A. The date is April 1, 1951.

"Q. And that was by the Un-American Activities Committee, was it, sir?

"A. Yes, sir.

"Q. To the full house?

"A. Yes, sir.

"Q. Will you refer to page 135 of that and tell us what information it states that the committee had concerning Mr. Gojack's connection with the American Peace Crusade?

"A. The name of Mr. Gojack appeared as an initial sponsor on a letterhead dated February 1951, of American Peace Crusade, 1186 Broadway, New York 1, New York.

"Q. Along with other people?

"A. Yes, sir.

"Q. Will you turn to pages 136 and 137 of that report and tell us whether that indicates that the committee had information, additional information concerning his connection with that organization?

[fol. 112] "A. Yes, sir.

"Q. What is that?

"A. Excuse me, is this the same report?

"Q. Yes, it is.

"A. The name of John Gojack appears as one of the signatories to a leaflet entitled, 'Let the People Speak for Peace,' published by the American Peace Crusade, entitled, 'The Washington Program,' and the subtitle of which is 'Bring Our Boys Home from Korea. Make Peace with China Now.'

"Q. All right, sir.

• • • • •

"By Mr. Hitz:

"Q. Did the Committee, Mr. Tavenner, hear testimony from a lady named Dorothy Funn, F-U-N-N?

"A. Yes, sir.

• • • • •
 "By Mr. Hitz:

"Q. Would you be good enough to turn to Miss Funn's testimony of May 4, 1953, page 1195, and read it, read all of it, Mr. Tavenner?

"A. 'Testimony of Mrs. Dorothy K. Funn, accompanied by her counsel.'

• • • • •
 [fol. 113] "A. (Continuing) 'Mr. Kunzig. Where are you presently employed, Mrs. Funn?

"Mrs. Funn. At the present time, I am a teacher in Public School 129, 604 Quincy Street, Brooklyn.'

"By Mr. Hitz:

"Q. I'm sorry, I can't follow that on the page. Will you tell us if it is on 1195?

"A. Yes, sir.

"Q. Where is it?

"A. About the upper quarter of the page.

"Q. All right, sir. Now, will you read further.

"A. 'Mr. Kunzig. In what position?

"Mrs. Funn. I am an upper grade teacher, seventh and eighth year.

"Mr. Kunzig. How long have you been so employed, Mrs. Funn?

"Mrs. Funn. Well, I was employed by the City of New York from 1923 to 1943, at which time I resigned. I went back into the school system in 1947 and have so remained in that job.

"Mr. Kunzig. Where were you employed from 1943 on, when you said you left the school system?

"Mrs. Funn. In several capacities. One, as the administrative secretary for the Negro Labor Victory Committee; another, as legislative representative for the National Negro Congress, with offices in Washington; another, as representative for the New York State CIO Political Action Committee during the 1944 presidential campaign, after which I went back to the previous job of legislative representative; and somewhere in between I also acted as the executive secretary for a Committee on Unity, made up of representatives of organizations and individuals interested in eliminating the cause that had made the riots in Harlem possible, about that time.'

"Q. Now will you please stop there a moment to see if there is some we can omit. (Looking at document.)

"I don't think there is enough at the moment to omit to make it worthwhile to break the continuity. Will you continue, please, sir?

"A. 'Mr. Kunzig. Mrs. Funn, the next question you specifically wanted me to ask you, Are you a Negro, Mrs. Funn?

"Mrs. Funn. I am.

"Mr. Kunzig. Did you maintain your residence in New York during the period you were out of the school system?

"Mrs. Funn. No, not all of the time. I was what you might term a commuter for part of the time. Then I did [fol. 115] establish residence in Washington, D. C., for, oh, I would say about two years, permanent residence for about two years.

"Mr. Kunzig. I see. Where was that residence?

"Mrs. Funn. 3100 Water Street, Northwest, Washington, D. C.

"Mr. Kunzig. You left Washington in what year?

"Mrs. Funn. I left Washington in late 1946, I should say about December, and came back to Brooklyn.

"Mr. Kunzig. To teach?

"Mrs. Funn. That is right.

"Mr. Kunzig. And now you are still teaching?

" 'Mrs. Funn. That is right.

" 'Mr. Kunzig. Mrs. Funn, when and where were you born?

" 'Mrs. Funn. I was born in Brooklyn, New York, June 7, 1903.

" 'Mr. Kunzig. Are you now a member of the Communist Party?

" 'Mrs. Funn. No, I am not.

" 'Mr. Kunzig. Have you ever been a member of the Communist Party?

" 'Mrs. Funn. Yes, I have.

" 'Mr. Kunzig. When did you become a member?

[fol. 116] " 'Mrs. Funn. I joined the Communist Party in May 1939.

" 'Mr. Kunzig: And according to your recollection, when did you leave the party?

" 'Mrs. Funn. Actually, about June 1946. Ideologically, I would say that I had left it many months prior to that.'

"Q. Now, I think there is something we can omit there, Mr. Tavenner. Will you now turn to page 1205. Is that still the testimony of Mrs. Funn on the same occasion before the committee?

"A. Yes, sir.

"Q. And although I think I may have stated it, I would like to have you state it, because you are the witness; the date and year of this testimony.

"A. This testimony was taken on the 4th day of May 1953.

.

"By Mr. Hitz:

"Q. Will you read on 1205 now, from Mrs. Funn, about the middle of the page,

" 'Did you attend,' etc.

"A. Yes, sir.

" 'Mr. Kunzig. Did you attend Communist Party meetings in Washington, D. C.?

[fol. 117] "Mrs. Funn. I attended a few of those when I was in town.

"Mr. Kunzig. To your knowledge were the individuals attending those meetings members of the Communist Party?

"Mrs. Funn. Well, I must repeat again, any of these meetings, Communist Party meetings of a club or a group, were attended only by members of the party. No outsiders were allowed into those meetings, and those that I attended of the group in Washington had to be members of the Communist Party.

"Mr. Kunzig. Well, now, you yourself, you said, were a legislative representative.

"Mrs. Funn. That is right.

"Mr. Kunzig. That is what is generally known, I believe, to the public, as a lobbyist. Would that be correct?

"Mrs. Funn. Yes, yes.

"Mr. Kunzig. Now, as a lobbyist, I presume you came in contact with other lobbyists?

"Mrs. Funn. I did.

"Mr. Kunzig. Did you come in contact—and I want you to think very seriously over this question—with any other legislative representatives or lobbyists whom you knew to [fol. 118] be members of the Communist Party?

"Mrs. Funn. I came in contact with a great number of legislative representatives, some whom I found later were members of the party, because they met with me in the group in the Communist Party there in Washington. There were regular meetings of the legislative representatives, regular Communist Party meetings of the legislative representatives in Washington.

"Mr. Kunzig. You mean—?

"Mrs. Funn. Yes.

"Mr. Kunzig. I want to get that straight.

"Mrs. Funn. Yes.

"Mr. Kunzig. You mean the Communist Party held meetings of Communist Party members who were also legislative representatives,—

"Mrs. Funn. That is right.

"Mr. Kunzig. (Continuing) —and they met as Communist Party members together?

"Mrs. Funn. That is right.

"Mr. Kunzig. Now, were they furthering the cause of the groups they were representing in the legislature or were they attempting to further the cause of the Communist Party?

"Mrs. Funn. Well, I might say in all Communist Party [fol. 119] meetings the basic idea was to give full attention and study to Marxism, Leninism, and furthering the cause of the revolution.

"Mr. Kunzig. Well, now, Mrs. Funn—

"Mrs. Funn. You see, come the revolution, some of them were going to be commissars of this, that or the other thing. That is a quote.

"Mr. Velde. May I ask Mrs. Funn whether these people were registered as lobbyists, any of them?

"Mrs. Funn. No, I don't. At that time, this was—there was no law to that effect. This was back in 1933, 1934—

"Mr. Velde. I see.

"Mrs. Funn. —1935. And they were the legislative representatives of their duly constituted organizations, whether it was the United Auto Workers or the Food and Tobacco Workers or the Maritime Union or the International Longshoremen and Warehousemen's Union—those types of organizations plus others like the National Negro Congress and National Federation for Constitutional Liberties. That is the way it was. But there was no registration.'

"Q. All right, sir, I think we can omit until a passage on 1208 of the same testimony, Mr. Tavenner. Will you pick up about the middle of the page, where Mr. Kunzig said;

[fol. 120] "Did you know Russell Nixon?"

"A. Yes. After having identified some of the members of this group, the following questions were asked and answers given:

"Mr. Kunzig. Did you know a Russell A. Nixon?

"Mrs. Funn. Yes, I knew him. He was originally with the, I think he was originally with the CIO, but I know he joined the United Electrical, Radio and Machine Workers of America as their representative.

"Mr. Kunzig. Did you know him to be a member of the Communist Party?

"Mrs. Funn. He met with the group.

"Mr. Kunzig. Could you keep your voice up, Mrs. Funn.

"Mrs. Funn. I'm sorry.

"Mr. Kunzig. I know it is difficult,—

"Mrs. Funn. Yes.

"Mr. Kunzig. (Continuing) —but if you will speak as clearly as you can.

"Mrs. Funn. Yes.

"Mr. Clardy. I would like to ask you a question there. You said he met with the group. I think counsel's question was, did you know Nixon as a member of the Communist Party.

[fol. 121] "Mrs. Funn. Yes, that is the answer.

"Mr. Kunzig. I think sir, it is already on the record that all of those people who met with this group, as I understand it,—

"Mrs. Funn. That is right.

"Mr. Kunzig. (Continuing) —were members of the party. Is that correct?

"Mrs. Funn. I tried to make that very clear, that no one who was not a member of the party could attend these specific meetings.

"Mr. Kunzig. So that any other names you mention from now on that met with you in the group, you mean are members?

"Mrs. Funn. Are members.

"Mr. Kunzig. Or you know them as members of the Communist Party?

"Mrs. Funn. As members of the Communist Party; that is correct.

"Mr. Velde. In what capacity was Mr. Nixon acting?

"Mrs. Funn. Legislative representative of the United Electrical, Radio and Machine Workers of America.

"Mr. Carney. He still is, isn't he?

[fol. 122] "Mrs. Funn. I don't know.'

"Q. Thank you, sir.

"Now, Mr. Kunzig, with further reference—

"A. Tavenner.

"Q. —or Mr. Tavenner, with further reference to Mr. Nixon's pertinency, would you turn to the hearings entitled, 'Fort Wayne, Indiana,'—

• • • • •

"By Mr. Hitz:

"Q. On page 139, there is a quotation from a letter which is purported to be signed, 'Russ Nixon.' Would you please be good enough to tell us the background of that letter so far as the committee is concerned, whether you had it before Mr. Gojack testified, and where it was received from, in a general way?

"A. The committee had procured from a police agency the letter referred to, written by Mr. Nixon, addressed to John Gojack, John T. Gojack, attached to which was an enclosure referred to in that letter, which emanated from France.

• • • • •

"By Mr. Hitz:

"Q. Would you be good enough, Mr. Tavenner, to read [fol. 123] that portion of the testimony of Mr. Gojack and your questioning of him that concerns this letter from Nixon to Gojack, reading the letter, and the letter from Paris, France, as well, and tell us where you are reading from?

"A. Yes, sir. I believe if you begin at the first question asked at the bottom—the last question asked at the bottom of page 138,—

"Q. All right, sir.

"A. 'Mr. Tavenner. I was asking you about Mr. Russell Nixon. Did he attend the executive board meetings that you said you attended in March 1951 and in December or January preceding?

" 'Mr. Gojack. I don't recall, sir. I would like to explain that as legislative representative of our union, we invited Mr. Nixon upon occasion to address district council meetings. He never attended a district board meeting, but he might have attended a district council meeting. Whether or not he was there that year, I don't recall.

" 'Mr. Tavenner. I hand you a letter bearing date of March 27, 1951, on the stationery of United Electrical, Radio and Machine Workers of America, addressed to Mr. John T. Gojack, and over the signature of Russ Nixon. [fol. 124] Will you examine it, please, and state whether or not you recall having received it?

" 'Mr. Gojack. Now that you show me this letter, I recall having received some such letter from Brother Nixon.

" 'Mr. Tavenner. Will you read it into the record, please?

" 'Mr. Gojack. (Reading)

" "Last week we received, addressed to the International Union, a letter from the Metal Workers Union officials in Paris, copy of translation of which is attached.

" "Although I have not had a chance to talk with anyone here in the international union about this, since this is a general communication and you indicated an interest in some such contacts at the last general executive board meeting, I am informally sending this to you for whatever consideration you think it might justify in your district.

" "Fraternally yours,

" "Russ Nixon."

" 'Mr. Tavenner. You have previously told us that you had no interest whatever in the Metal Workers Trade Union of Paris and had no desire to make any contact with that organization. Will you explain that testimony in light

[fol. 125] of the statement by Mr. Nixon that you had at the very previous meeting of the executive board indicated such an interest?

"Mr. Gojack. Yes, I will be glad to, sir. The interest I indicated at the January executive board meeting was not with reference to contacting the Metal Workers Union officials in Paris or any other specific organization. As I recall, some time prior to then we had discussed on a number of occasions the possibility of officers of our Union—at one time I remember strongly advocating that the president of our union take a trip to Europe and that we see for ourselves what was happening over there in the trade-union movement, because we had been getting reports from other trade unionists, from people who were sent over there by the State Department, and I specifically remember posing the question that we ought to have some of our own officials go over to get firsthand reports on what was happening.

"Mr. Tavenner. Is that the reason you were applying for a passport to go to Europe?

"Mr. Gojack. No. As a matter of fact, I advocated in our general executive board that we establish contacts with unions with whom we had relations. I gave the examples that I recalled here, Wayne Pump and Burroughs Adding Machine, having plants. I remember as a result of my discussion in the general executive board meeting, for example, sir, that one of the other general vice presidents gave me the address of a union in England from which I could get some information on the Burroughs Adding Machine Co. there, some wage-rate information which we could use in our organizing efforts in the Detroit plant of Burroughs which was then and is today unorganized. I have been a strong advocate of this; and I remember also distinctly that in the course of one of these discussions at our general executive board meeting, having a clipping from either the Wall Street Journal or the New York Times from some official in General Motors or Ford, one of the bigger auto firms, suggesting that a way

to ease the cold war might be an exchange, a broad exchange of many people between here and Europe—

“‘Mr. Tavenner. And you desired to make an exchange with the Metal Workers Union, a trade union in Paris?

“‘Mr. Gojack. No specifically; no. Just the general question of international trade unions.

“‘Mr. Tavenner. Mr. Nixon says it is a matter you were interested in and had inquired about, and he thought it important to send you a document from that organization. Doesn't that mean that you were interested in exchange with that very organization?

[fol. 127] “‘Mr. Gojack. No; it means nothing of the sort. As a matter of fact, he says in this letter that since this is a general communication—

“‘Mr. Tavenner. A general communication from the Metal Workers Trade Union.

“‘Mr. Gojack. Right. I indicated an interest in some such contacts, plural. I don't recall any inference here that I was seeking contact with the Metal Workers Union but quite the opposite, contacts with any possible union, all possible unions.

“‘Mr. Tavenner. It was a trade union which you knew to be a Communist outfit, didn't you?

“‘Mr. Gojack. Which union?

“‘Mr. Tavenner. The Metal Workers Trade Union.

“‘Mr. Scherer. Of Paris.

“‘Mr. Gojack. I don't know what it is today, to be very honest about it. I don't know what it is.

“‘Mr. Tavenner. You read the document that Mr. Nixon sent you, didn't you?

“‘Mr. Gojack. I believe I did, but I haven't the slightest recollection of what it was.

“‘Mr. Tavenner. I am going to give it to you in a moment [fol. 128] and ask you whether or not, in your judgment, it is a communist document.

“‘Mr. Gojack. I will be happy to read it, sir.

“‘Mr. Tavenner. Will you examine the letter again and see whether or not the letter sent you was a copy made by

Mr. Nixon in which your address is filled in in original type!

"Mr. Gojack. Yes, sir.

"Mr. Tavenner. What does that indicate to you?

"Mr. Gojack. It indicates clearly to me that this communication was sent to a number of other people, also.

"Mr. Tavenner. Do you know how many vice presidents of your organization received a copy of that letter?

"Mr. Gojack. I haven't the slightest, sir. Very frequently, Brother Nixon sends information that comes across his desk in New York or here in Washington, to all of the district presidents. It has been a custom of his down through the years. We get detailed information from him that it isn't practical to send out to every local union. It is sent to the district offices.

"Mr. Tavenner. Do you recall more definitely now about the subject of conversation in your executive board meeting that Mr. Nixon is referring to in that letter when you [fol. 129] said you were interested in similar contacts?

"Mr. Gojack. He uses the language "some such contacts". I testified here, and I will repeat, that I raised this question in many board meetings, and I would like to consider myself a champion of the cause for greater exchange between people throughout the world. I think it would help to bring about a little more stable peace if the common people of the various countries would get together a little more than they do.

"We may learn something about them, and they may learn something about us.

"Mr. Scherer. In view of these letters and the subsequent testimony, Witness, do you say that your contemplated trip to Europe, for which you were denied a passport, was still a pleasure trip, a vacation?

"Mr. Gojack. Mr. Scherer, this communication was in March of 1951, and I would respectfully suggest that I—

"Mr. Scherer. You can say it was not. You can say no.

"Mr. Gojack. No, it has no connection. I will explain why. I can show you communications from all kinds of

unions all over, in any given year that you want to. We don't keep a file of all of them. We keep a file of some of them. To suggest the communication of March 27 has some [fol. 130] relationship to my deciding in December or November that I wanted to take a vacation, and to imply something evil, I think is stretching the point.

"Mr. Doyle. Was it not about this time that you were approaching the State Department? What months were you at the State Department?

"Mr. Tavenner. 1952.

"Mr. Doyle. 1952, a year later.

"Mr. Moulder. Let's proceed and hurry along as expeditiously as possible.

"Mr. Tavenner. I desire to offer Mr. Nixon's letter in evidence, and ask that it be marked "Gojack Exhibit No. 8," for identification purposes only, and to be made a part of the committee files.

"Mr. Moulder. It is so ordered.

"Mr. Tavenner. Attached to the letter which has been introduced in evidence is the following enclosure. In parentheses there appears at the top:

" "Following is translation of a letter received by UE International Office from French trade unionists in the metal manufacturing field:

" "Paris, February 9, 1951.

[fol. 131] " "Dear Brother: I am sending you attached a copy of a letter sent on to the smelter workers which was sent by the Paris metalworkers to their American brothers.

" "I ask you to do all you can to make this letter known to the American metalworkers in order to rebuild the lines of international solidarity between the workers of our two countries.

" "You have, dear brother, our fraternal greetings,

" "H. Jourdain."

“ ‘And here is the letter :

“ ‘ “Paris, February 9, 1951.

“ ‘ “Paris Metal Workers to American Metal Workers.

“ ‘ “Dear Brothers: Meeting in conference on February 3 and 4, 1951, the Paris metal workers send you their fraternal and friendly greetings.

“ ‘ “They request that you be the bearer of their sentiments to all the metalworkers in New York.

“ ‘ “At this time when the capitalists wish to push the people into a new war, the Parisian metalworkers address themselves to their American brothers and call upon them to lead together the struggle against the warmakers.

“ ‘ “They have learned with pleasure that their American [fol. 132] brothers in the electrical workers union are leading, like themselves, the same battle for peace and well-being.

“ ‘ “The Parisian metalworkers who have known on their own soil 3 wars in 75 years and the consequences which have resulted from these wars, the millions of dead, injured, widows and orphans, the piles of ruins which are not yet cleaned up, know well all the consequences which the policy of war threatens to their country.

“ ‘ “The increase in taxes, high cost of living, depression, freezing of wages, increased speedup, poverty, are already for them (the Parisian metalworkers) the consequences of this policy.

“ ‘ “The Parisian metalworkers know that like themselves, the American metalworkers are profoundly devoted to peace and do not confuse them with their capitalist government.

“ ‘ “The Parisian metalworkers remember the tremendous sacrifices of the Soviet Union in the struggle against Hitlerism and are in agreement with the peaceful propositions formulated by her at Lake Success.

“ “Conscious that the forces of peace are the strongest in the world, forces of which a part is the Soviet Union and the popular democracies as well as the people of the capitalist countries and the colonial countries, the Parisian [fol. 133] metalworkers know that the war is not inevitable, that one can and one must prevent it.

“ “The millions of signatures received by the Stockholm appeal condemning atomic arms have shown everyone the strength which is represented by the people desiring peace.

“ “American metalworkers, the millionaires that make of your country an immense arsenal, source of materials of war, of death, would make of you the accomplices of their crime and the associates of the Nazis whom you have fought with us.

“ “The Parisian metalworkers struggle with all their strength against the preparations for war, against the war-makers, against the rearmament of Germany, for the ending of the war in Vietnam and the return of the expeditionary corps as you fight for the return to the United States of the American Army in Korea.

“ “The Parisian metalworkers associate themselves with the grief and suffering of the American mothers whose children are dead in Korea, and will struggle with all their force in order that their country will not know the horrors which those valorous people now struggling for their independence know (in Korea). Pleven, provisional chief of [fol. 134] the government of France, in the course of his conversations with Truman, conspired behind our backs the stepping up of the preparations of war and the increasing of the policy of poverty which expresses itself already amongst us by the wage freeze.

“ “No people threaten peace, it is why the Parisian metalworkers call you over the frontiers to make, with them and the other workers of the world, the call for peace.

“ “General Eisenhower, whom the Parisian people have applauded in 1944 with the Allied armies having struggled

against Hitlerism, has received in 1951, in our capital an entirely different welcome. The people of Paris do not want the rearmament of Germany nor an Atlantic army, nor a foreign commander in chief. It is why they have said to Eisenhower, 'Go home and stay there.'

" "In the other capitals of Europe the reception of the people was the same.

" "Brother American metalworkers, those of you who wish peace as we do from the depths of your heart, the security of your firesides, who do not wish to know on your land the horrors of war which we have known, let us establish amongst us the lines of brotherhood and comradeship—"

" "and comradeship" is stricken out—

[fol. 135] " "let us exchange experiences, let us learn to know each other better, let us unite our efforts in order to put a stop to the policy of war and poverty of our respective governments.

" "Brother American metalworkers, the Paris metalworkers send you their fraternal trade-union greetings.

" "For the Conference.

" "The Secretariat of the Seine Metal Workers Union.

" "Andre Lunet,

" "Secrétaire General"

" "And the names of eight other members of the union.

" "That is the document which Mr. Nixon transmitted to you and, as you say, no doubt to other vice presidents of your districts. Have you read any stronger propaganda document emanating from abroad than that, contrary to and against the interest of this country and the foreign policy of this country?

" "Mr. Gojack. Have I read any stronger?

" "Mr. Tavenner. Yes. Do you know of any document emanating from abroad of a more propagandist nature than that document?

"Mr. Gojack. The most accurate answer I can give to that is, of course, in the New York Times I read the debates of people in the United Nations, and I read stronger denunciations of our foreign policy than that in some of the [fol. 136] speeches in the U.N.

"Mr. Tavenner. Is there any doubt in your mind now, after having heard that letter read, as to the Communist character of the organization known as the Seine Metal Workers Union or the Metal Workers Union of Paris?

"Mr. Gojack. Sir, I couldn't answer that question with a simple "Yes" or "No" answer, for the reason that, as I testified earlier, I don't know what the organization is. I don't know whether it is a Catholic union, a Communist union, or the so-called third force that they have there, for example, that Eisenhower got elected on. He got elected—at least he got the votes out our way based upon his strong stand against the Korean war.

"Mr. Tavenner. Do you support the statement contained in that letter?

"Mr. Gojack. Sir, I couldn't say that I support the statements in this letter, because there is general language in here, there are things in here like the reference to increase in taxes and the high cost of living and the freezing of wages—

"Mr. Tavenner. What about the Stockholm peace appeal?

"Mr. Gojack. I don't know anything about the Stockholm [fol. 137] holm peace appeal, sir.

"Mr. Tavenner. You never participated in that?

"Mr. Gojack. I don't know anything about it. I know it has been condemned.

"Mr. Tavenner. Did you engage in the movement to bring the troops back from Korea?

"Mr. Gojack. Did I engage in the movement?

"Mr. Tavenner. Yes. Did you advocate it?

"Mr. Gojack. Oh, long before a lot of other people said that the Korean war was an error and that other things should have been done about it, I spoke out for peace and

against useless killing. I believe strongly that that particular war, as it was settled ultimately by negotiations, should have been averted, if necessary by the same techniques.

"I am against war. I am for peace. Is it a crime to be for peace in this country?"

"Q. Mr. Taveaner, thank you. I think that is enough of it.

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[fol. 139] "By Mr. Hitz:

"Q. There is a little bit, Mr. Tavenner, that we want in evidence here which is not contained in the report, but is part of the full hearings from which you have recently been reading, being government No. 8."

I am interrupting the reading to advise the court that government eight in the first trial is now government 12.

I am reading again without omission.

"Will you turn to page 19 of government 8 and tell us if that is the commencement of the hearings at which Mr. [fol. 140] Gojack subsequently testified?"

"A. Yes, sir, it is.

"Q. And they were held on what day and at what place?"

"A. February 28, 1955, in the Old House Office Building, House of Representatives.

"Q. In the city, sir?"

"A. In Washington, D. C.

"Q. Now, would you be good enough to read page 19, and on page 20 until I ask you to stop?"

"A. Yes, sir.

"Public Hearing

"The subcommittee of the Committee on Un-American Activities met, pursuant to notice, at 10:20 a.m., in the caucus room, 362, Old House Office Building, Washington, D. C., Hon. Morgan M. Moulder (chairman) presiding.

"Committee members present: Representatives Morgan M. Moulder (chairman), Clyde Doyle, and Gordon H. Scherer.

"Staff members present: Frank S. Tavenner, Jr., counsel; Donald T. Appell, investigator; and Thomas W. Beale, Sr., chief clerk.

"Mr. Moulder. The committee will be in order.

"The subcommittee was appointed pursuant to the rules [fol. 141] of the House as ordered by Francis E. Walter, chairman of the full committee, and it is composed of three members, the Hon. Clyde Doyle of California, on my right, the Hon. Gordon H. Scherer, of Ohio, and myself as chairman of the subcommittee. Mr. Scherer, of Ohio, is absent and will be present within the next few minutes.

"There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

"We had expected to hear at this time the testimony of David Mates, an international representative of the United Electrical, Radio and Machine Workers of America. His appearance before this committee was continued twice at his own request. At this time the inability of the United States marshal to effect service of process strongly indicates an effort on the part of Mr. Mates to evade service. This matter will be investigated and, if the facts warrant, the House of Representatives will be requested to cause the issuance of a warrant for his arrest and production before this committee as a witness.

[fol. 142] "In the course of the investigation conducted by this committee at Dayton in September 1954, information was obtained indicating that one or more of the witnesses to be heard today should have firsthand knowledge of Communist Party activities in this area of Dayton and elsewhere.

"Mr. Tavenner, are you ready to proceed?

"Mr. Tavenner. Yes, sir.

"Mr. Moulder. Call your first witness.

"Mr. Tavenner. Julia Jacobs, will you come forward, please?

"Mr. Donner. My name is Frank Donner. I am counsel for Miss Jacobs and two other witnesses who have been subpoenaed today. Before Miss Jacobs is sworn in, may I file with the committee for incorporation in the record a motion addressed as to the jurisdiction of the committee to proceed.

"Mr. Moulder. You may file the motion; and then whatever action the committee desires to take upon it, we will take.

"Mr. Donner. Will it be physically incorporated in the record, sir?

"Mr. Moulder. We will decide that question after we [fol. 143] have examined the motion.

"Mr. Donner. I will file two copies with the committee.

"Mr. Moulder. Let the record show that the motion by counsel is duly filed.'

"Q. That is enough, thank you, sir.

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[fol. 145] "Q. Now, would you turn to the report, which is Government 4, Mr. Tavenner, and would you be good [fol. 146] enough to turn to page 3 of the report, and commence to read at the top, the testimony beginning with Mr. Moulder's statement of 'call your next witness.' Will you commence reading there, please.

"A. Yes, sir.

"Mr. Moulder. Call your next witness.

"Mr. Tavenner. Mr. John T. Gojack, will you come forward, please, sir.

"Mr. Moulder. Hold up your right hand and be sworn. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

"Mr. Gojack. I do.

"Testimony of John Thomas Gojack, Accompanied
by Counsel, Frank Donner

"Mr. Moulder. Are you accompanied by counsel?

"Mr. Gojack. Yes.

"Mr. Moulder. Counsel state your name.

"Mr. Donner. My name is Frank Donner, 342 Madison Avenue, New York City.

"Mr. Tavenner. Please state your name.

"Mr. Gojack. John Thomas Gojack.

.

[fol. 147] "Mr. Tavenner. When and where were you born, Mr. Gojack?

"Mr. Gojack. I was born in Dayton, Ohio, August 15, 1916.

"I think I should have noted that there is an omission between the last question asked and the question before.

"Q. Yes, I think that would be helpful if you would do it each time.

"A. 'Mr. Tavenner, Where do you now reside?

"Mr. Gojack. I reside in Fort Wayne, Indiana.

"Mr. Tavenner. What is your address in Fort Wayne?

"Mr. Gojack. My address is 2303 Florida Drive.

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[fol. 158] "By Mr. Hitz:

"Q. Now, would you turn to the report, which is Government 4, Mr. Tavenner, and would you be good enough to turn to page 3 of the report, and commence to read at the top, the testimony beginning with Mr. Moulder's statement of 'Call your next witness.' Will you commence reading there, please?"

.

"A. Yes, sir.

"Mr. Moulder. Call your next witness.

"Mr. Tavenner. Mr. John T. Gojack, will you come forward, please, sir.

"Mr. Moulder. Hold up your right hand and be sworn. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

[fol. 159] "Mr. Gojack. I do.

"Testimony of John Thomas Gojack, accompanied by counsel, Frank Donner.

"Mr. Moulder. Are you accompanied by counsel?

"Mr. Gojack. Yes.

"Mr. Moulder. Counsel, state your name.

"Mr. Donner. My name is Frank Donner, 342 Madison Avenue, New York City.

"Mr. Tavenner. Please state your name.

"Mr. Gojack. John Thomas Gojack.'"

• • • • •

[fol. 161] The asterisks then are supplied by the following:

"Mr. Tavenner. When and where were you born, Mr. Gojack?

"Mr. Gojack. Mr. Congressman before I answer any more questions I want it clearly understood in the record that I am protesting my appearance, my subpoena before this committee, because this committee is not engaged in—

"Mr. Moulder. Mr. Gojack, under the rules of the committee, you are not permitted to make an opening statement preceding the testimony which you are about to give. If you have a statement we will be happy to receive it and file it.

"Mr. Gojack. Mr. Congressman, I was subpoenaed to come here, I am protesting my appearance here and before I answer any questions I want to state my protest and the grounds of my protest.

"Mr. Moulder. You can file your protest as part of the proceedings. It will be received and filed. But the committee's rules prohibit your making a statement denouncing the committee and the conduct of the hearings or subpoena under which you are appearing here.

"Mr. Gojack. I haven't denounced the committee yet.

"Mr. Moulder. I assume you are about to, apparently.

[fol. 162] "Mr. Gojack. No, I am going to state my position before this committee if you will permit me to explain my position.

"Mr. Moulder. After you have been interrogated, then, if you want to make an explanation concerning any of the testimony or matter brought out by the testimony, you will probably be permitted to make a short statement if it is relevant to the questions and subject matter.

"Mr. Gojack. If I know this is a union-busting venture and not a—

"Mr. Moulder. That is not tolerated. Such conduct on your part, or statement, is not tolerated by the committee.

"Mr. Gojack. I can prove it.

"Mr. Moulder. Proceed with your questioning, Mr. Tavenner."

Mr. Hitz: I have now supplied from government 12 the material indicated by the asterisks on page 63 of the Supreme Court Record, and in fact, I have gone one question beyond it.

(Mr. Hitz reading again from the Supreme Court Record)

Mr. Gojack replies: "I was born in Dayton, Ohio, August 15, 1916.

[fol. 163] "A. 'Mr. Tavenner. Where do you reside now?

"Mr. Gojack. I reside in Fort Wayne, Indiana.

"Mr. Tavenner. What is your address in Fort Wayne?

"Mr. Gojack. My address is 2303 Florida Drive.'"

• • • • •

"Mr. Gojack. My address is 2303 Florida Drive. Right here I would like to express some resentment against the way in which insinuations were made in questioning the previous witness, who happened to be a guest of my wife in my home.

"Mr. Tavenner. Since you raised that question, how long had you known Julia Jacobs?

"Mr. Gojack. Before I answer that question I want to explain that this is not a legislative investigation for a bona fide legislative purpose.

"Mr. Doyle. I submit the witness is reading a statement."

• • • • •

[fol. 164] "Mr. Tavenner. Will you tell the committee, please, what your present occupation is?"

"Mr. Gojack. My present occupation is in the capacity as general vice president and district president of the United Electrical, Radio, and Machine Workers of America, union organization that your chairman announced in the press he was out to put out of business. That is part of the reason why I think this whole investigation is a union-busting venture and not legitimate investigation.

"Mr. Tavenner. Are you an officer of District No. 9?"

"Mr. Gojack. Yes.

[fol. 165] "Mr. Tavenner. What is that office?"

"Mr. Gojack. I stated in answer to your first question, president of district 9.

"Mr. Tavenner. A district president. You didn't state what district.

"Mr. Gojack. I happen to be elected president of district council 9."

* * * * *

[fol. 170] "Mr. Gojack. I had had the experience of negotiating a number of agreements in plants in Dayton, Ohio, such as the Simons, Wood and White Co., such as the Harold Seabold Pottery Co., a number of other plants in that city and I organized the plant that this hearing is set up to try to help the corporation get the union out of, the Whirlpool Corp., in St. Joseph, Mich.

"Mr. Doyle. We are not interested in you or anyone else attacking the committee on that. It is not true, a voluntary statement growing out of a myth of your mind. If you will answer the questions, it will save your own time and you will get back on the job much quicker, and so will we.

"Mr. Gojack. Mr. Doyle, if I may explain my answer, 3 days before this committee was scheduled to come to Fort Wayne—

"Mr. Doyle. I am not interested in sitting here hearing you give expression to your bitterness against any company, nor any person, nor any group of persons. If you will

answer that you will get home on the job much quicker, and so will we.

"Mr. Gojack. I am only bitter at those people who seek [fol. 171] to bust unions and when an industrial relations manager like McClaren of Magnavox announced 3 days before anyone else knew it he was bringing the committee to Fort Wayne, I say that is union-busting.

"Mr. Doyle. If you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful.

"Mr. Gojack. Mr. Doyle, I respectfully submit this hearing is not for the purpose of investigating my political beliefs or affiliations.

"Mr. Doyle. We want to know if you are a Communist and the extent to which you have been.

"Mr. Gojack. I submit, sir, that you are not, for this reason—

"Mr. Doyle. We are not interested in your political registration at all. We want to know if you are part and party to the international Communist conspiracy. Are you or are you not?

"Mr. Gojack. Mr. Doyle, I respectfully submit that this hearing is not called for that purpose, for this reason: That you yourself said that this was a hearing called to investigate the Square D strike, a continuation of it.

[fol. 172] "Mr. Doyle. I said nothing of the sort.

"Mr. Gojack. One of the other Congressmen did.

"Mr. Doyle. Don't say I did because I didn't.

"Mr. Gojack. One of the Congressmen said this was called to complete some work of last year and had reference to the Square D strike. I was in that strike, helped lead that strike, and wasn't subpoenaed last year, so that the timing of this hearing—you could have subpoenaed me last year—proves this is set up only to—

"Mr. Moulder. You did not answer Mr. Doyle's question. He asked you if you were a member of the Communist Party and the conspiracy.

"Mr. Doyle. That is right."

• • • • •

[fol. 174] "Mr. Tavenner. I think now I shall ask the question that the Congressman asked you a few moments ago: Have you been a member of the Communist Party at any time while occupying any of the positions you have enumerated in the union?"

"Mr. Gojack. In 1949 and 1950 and 1951 and 1952 and 1953 and 1954, on August 24, 1954, I signed an affidavit which said:

" "I am a responsible officer of the union named below, the UE, I am not a member of the Communist Party or affiliated with such party, I do not believe in—" " " "

[fol. 175] Mr. Hitz: I will now read from page 68, the answer.

" "—"that believes in or teaches the overthrow of the United States Government by force or by an illegal or unconstitutional methods." " " "

I will now turn to page 93 of the Supreme Court Record and read as follows:

"Mr. Hitz: The stipulation that the Government enters into at the request of the defendant is that there was filed with the National Labor Relations Board affidavits for the years 1949, '50, '51, '52, and '54, by Mr. Gojack in which he made the oath, with respect to non-Communist activities, to characterize it.

"The Court: All right.

"By Mr. Hitz:

"Now, Mr. Tavenner, would you continue to read from the report without omission, which would mean you pick up with Mr. Scherer's—

"Mr. Donner: Excuse me, Mr. Hitz. Would you add to that, that that is in the form as required by Section 9(h) of the Taft-Hartley Act?"

[fol. 176] "The Court: You mean the affidavit?"

"Mr. Donner: Yes, sir.

"Mr. Hitz: Might I ask the witness a question on that

subject? I am not familiar with that enough to make that stipulation.

"The Court: All right.

"By Mr. Hitz:

"Q. Is that the statute that is being complied with when such an affidavit is filed that we are stipulating about?

"A. Yes, sir, that is.

"Mr. Hitz: We stipulate, Your Honor.

"The Court: Very well.

"Portions of Testimony of John T. Gojack Read Into Record.

"By Mr. Hitz:

"Q. Now, will you continue.

"A. 'Mr. Scherer. Mr. Chairman, I ask that the witness be directed to answer Mr. Tavenner's question, because obviously his answer was not responsive to the question.

"'Mr. Moulder. That is correct. The witness is directed to give a direct answer to the question propounded by counsel. As I recall, he asked you whether or not at any time while you have been employed by the UE in any [fol. 177] official capacity, were you at any time a member of the Communist Party.

"'Mr. Gojack. Mr. Moulder, I don't believe that this committee has any right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting.

"'Mr. Tavenner. The answer is not responsive to the question.

"'Mr. Gojack. I will explain why. If you want to know my political beliefs, you can check the records in Allen County, Ind.

"'Mr. Moulder. The fact that you refuse to answer that question truthfully—would that have the effect of busting the union?

"'Mr. Gojack. Every time I cast a ballot in the primary election I have had to register my party preference and

those records are available to you and that convinces me you are not interested in my political affiliation.

“‘Mr. Moulder. You were asked a very simple question as to whether or not you had ever been a member of the Communist Party while you were employed by or actively engaged in any official capacity for the UE.

“‘Mr. Gojack. I don't believe that Public Law 601— [fol. 178] “‘Mr. Moulder. You can answer that.

“‘Mr. Gojack. Gives this committee the right to inquire into my—

“‘Mr. Doyle. I do not mean to interrupt you again, but you are proceeding again to read that prepared statement. Why don't you come out for the right and give us a forthright answer, an honest-to-God answer, and answer the question promptly and quickly?

“‘You know very well whether or not you have been a member of the Communist Party. That is our question.

“‘Mr. Gojack. My forthright answer is this:

“‘Mr. Doyle. You have taken about 3 minutes already trying to get out of answering that question.

“‘Mr. Gojack. I haven't been hedging. You Congressmen have been taking the floor.

“‘Mr. Moulder. You said 1949, 1950, 1951, 1952, 1953, and 1954—

“‘Mr. Doyle. Down to August 24, 1954.

“‘Mr. Moulder. In 1948 were you a member of the Communist Party?

“‘Mr. Gojack. This affidavit is still on file. I don't believe the resolution which put you up in business, under the First amendment to the Constitution, gives you the right to [fol. 179] inquire into my political beliefs.

“‘Mr. Moulder. You have no hesitancy in answering the question as to 1949. That was after the law compelled you to sign this affidavit. Prior to that time, say 6 months prior to 1948, were you then a member of the Communist Party?

“‘Mr. Gojack. Mr. Congressman, because these hearings were set up to interfere in labor board elections in Magnavox and Whirlpool—

"Mr. Moulder. Do you refuse to answer the question?

"Mr. Gojack. No, if you let me answer the question I will answer it. I will give you the answer in my own way.

"Mr. Moulder. Were you a member of the Communist Party in the year 1948?

"Mr. Gojack. Look—it is not a simple question. When you have got paid liars like Matusow around here and you had a fellow from Ohio that was a lunatic that testified in one case, and this committee—

"Mr. Moulder. You can tell the truth.

"Mr. Gojack. This committee took the word of a lunatic and tried to frame some people, and Cecil Scott and Representative Walter—

"Mr. Tavenner. Cecil Scott never testified.

[fol. 180] "Mr. Gojack. The chairman of the committee said Cecil Scott was a lunatic and altered a document before this committee and Walter said he would recommend the matter be referred to the United States Attorney.

"Mr. Tavenner. That doesn't excuse you from telling the truth. What is the truth? Were you a member of the Communist Party at any time before you became a UE employee or since?

"Mr. Gojack. When you have a paid liar like Matusow—

"Mr. Tavenner. He is not testifying about you.

"Mr. Gojack. Matusow tells in his revelations about going into Dayton, Ohio, and meeting with the personnel manager—

"Mr. Scherer. I ask that this diatribe be stopped, Mr. Chairman. I don't have to take that from you even if the chairman—it is a simple question.

"Mr. Chairman, I ask that you direct him to answer the question. May I ask a question?

"Were you ever a member of the Communist Party? Let's get the record straight because I want to get this record just right. Were you ever a member of the Communist Party?

"Mr. Gojack. I am going to answer that question in [fol. 181] my own way.

"Mr. Moulder. The question calls for a civil answer.

"Mr. Gojack. Not while you have paid liars like Matu-sow and Strunk, who said this lad was running a strike in a guided missile plant in Detroit. I was involved in that strike. It is not a guided missile plant, in the first place. I tried to break that strike on that paid liar's testimony.

"Mr. Scherer. I am directing you to quit talking and answer the question, and if you don't you are in contempt.

"Do you understand?

"Mr. Gojack. I think it is up to the courts to decide who is in contempt, not you. We haven't reached a stage in this country where a Moulder or a Scherer can tell who is in contempt. I have some faith in the courts of this land yet.

"Mr. Moulder. The Chair directs you to answer the question propounded to you by Mr. Scherer. You have not answered the question, I understand.

"Mr. Tavenner. Let's get together on the question because that is important.

"Mr. Scherer. Mr. Chairman, may I have the floor?

"Mr. Moulder. Yes.

"Mr. Scherer. Were you ever a member of the Communist Party?

[fol. 182] "A. 'My answer to that question is that since 1949 I have signed these affidavits, one on file now. McCarthy had an investigation, which the Department of Justice said—

"Mr. Scherer. Just a minute.

"Mr. Chairman, I ask that you direct him to answer my question.

"Mr. Moulder. The Chair directs you to answer the question.

"Mr. Gojack. I am going to answer your question if you will be patient.

"Mr. Moulder. When?

"Mr. Gojack. If you will stop interrupting and let me answer, I will.

"Mr. Moulder. How long do you think it will take you to answer?

"Mr. Gojack. I think I can do it in about a minute and a half.

"Mr. Moulder. That question calls for a simple 'yes' or 'No.'

"Mr. Gojack. Not when you have paid liars like Matusow around who frame these hearings.

"Mr. Moulder. That is enough.
[fol. 183] "Mr. Gojack. I think the first amendment to the Constitution protects me in my right to challenge this committee asking me any questions about my political affiliation or beliefs and especially when it is used for union-busting.

"Mr. Moulder. Do you claim the privilege under the fifth amendment now?

"Mr. Gojack. No; I have not.

"Mr. Moulder. The Chair directs you to answer the question: Were you ever a member of the Communist Party?

"Mr. Gojack. I am saying the first amendment to the United States Constitution gives me the right to challenge your committee using this hearing for union-busting and for strike breaking as in the case of this paid liar, Strunk, who lied about the Square D strike.

"Mr. Moulder. Do you decline to answer the question?

"Mr. Gojack. I will answer the question my own way.

"Mr. Moulder. Do you decline to answer the question for the reasons you have just stated?

"Mr. Gojack. For the reason that the first amendment—

"Mr. Moulder. Do you decline to answer for the reason of the first amendment; is that right?

"Mr. Gojack. No; for the reason that the first amendment of the United States Constitution—

"Mr. Moulder. That is enough. Proceed.

"Mr. Gojack. I want to give my explanation.

"Mr. Scherer. Mr. Chairman, I insist that you ask counsel to proceed now.

"Mr. Moulder. Proceed. However, I want to—

"Mr. Gojack. You are not permitting me to give my explanation of the answer.

"'Mr. Moulder. You have not attempted to answer the question. You have been making a speech like an ordinary soapbox Communist orator.

"'Mr. Gojack. I haven't had the opportunity to vote myself a \$10,000 raise.

"'Mr. Moulder. Let us proceed.

"'Mr. Gojack. I want the record to show I have not been given an opportunity to make an explanation.

"'Mr. Moulder. Are you refusing to answer the question because Congress voted itself a \$10,000 raise?

"'Mr. Gojack. No; but I resent—and not with bitterness against my Government because I love my Government, although I dislike some of the people currently in control of it from Charlie Wilson on down.

[fol. 185] "'Mr. Moulder. Can you—

"'Mr. Gojack. Some of these other corporation people here are here for the sole purpose of using this hearing to bust our union.

"'Mr. Doyle. You have made a speech, so your members will know what you have said before the committee.

"'Mr. Moulder. I want to resubmit the question whether or not you were a member of the Communist Party in the year 1948 or at any time prior to the time you signed the first affidavit referred to in your testimony.

"'Mr. Gojack. My answer to that is—

"'Mr. Moulder. You answered the question as to 1949, 1950, 1951, 1952, 1953, and 1954.

"'Mr. Doyle. No, he has not. All he said was he swore to an affidavit. I do not take cognizance that the affidavit is an answer to the question.

"'Mr. Moulder. Were you then a member of the Communist Party in 1948, at any time during the year 1948?

.

"(Continuing) "'Mr. Gojack. The purpose of this hearing clearly in my mind is not legislative in character.

"'Mr. Moulder. Do you decline to answer?

[fol. 186] "'Mr. Gojack. This hearing is designed to influence an election, designed to smear me. You have no right as a committee—

"Mr. Moulder. You are arguing with us. You have not answered the question, you have declined to answer it.

"Mr. Gojack. My answer to the question is when you have paid liars like Matusow, paid liars like Strunk, and paid liars like this lunatic, Cecil Scott, around—

"Mr. Doyle. That is the fourth time you have given those as your reasons.

"Mr. Gojack. There may be others.

"Mr. Doyle. Don't repeat those same reasons. Start in on some new ones, if you have them.

"Mr. Gojack. I think my reason is about the best one I can think of because I love the United States Constitution and I think that the first amendment ought to protect me, particularly insofar as the first amendment doesn't give or rather guards against the kind of an operation this witch-hunting committee is engaged in.

"Mr. Moulder. Do you claim the privilege under that amendment and decline to answer? Do you decline to answer by claiming the privilege under the first amendment? [fol. 187] "Mr. Gojack. Yes.

"Mr. Scherer. Let's go to the next question.

"Mr. Moulder. All right.

"Mr. Doyle. It is 4:30, Mr. Chairman. We talked about adjourning.

"Mr. Gojack. May I finish my explanation? I haven't finished yet. I mean in regard to this paid liar Matusow, this liar Strunk, Cecil Scott—

"Mr. Scherer. I ask that we proceed with the next question. Matusow was a Communist.

"Mr. Gojack. Also a union buster. He was your boy then. You loved him then.

"Mr. Moulder. I want to ask you one question: Are you now a member of the Communist Party?"

Mr. Hitz: I am interrupting to point out that is count 1 in this indictment.

"A. (Continuing) "Mr. Gojack. I have this affidavit on file and that affidavit speaks for itself.

"Mr. Scherer. Wait a minute. I ask that you direct the witness to answer your question. Let's keep this record

straight. I am going to make a motion to cite him for contempt.

"Mr. Moulder. The Chair directs you to answer the [fol. 188] question "Yes" or "No": Are you now a member of the Communist Party?

"It is a very simple question calling for a very simple answer.

"Mr. Gojack. I swore to an affidavit.

"Mr. Moulder. What was the date of the affidavit?

"Mr. Gojack. August 24, 1954.

"Mr. Moulder. I am referring to this date.

"Mr. Gojack. This covers this date. This affidavit is still on file.

"Mr. Doyle. It does not.

"Mr. Gojack. It does.

"Mr. Doyle. The chairman asked you whether or not you are a member of the Communist Party today, the date you are sitting in that chair.

"Mr. Gojack. I am telling you this affidavit is on file here in Washington and this affidavit, signed and notarized says I am not a member of the Communist Party or affiliate with such party and it also has the reference in there to not believing in or not being a member of nor supporting any organization that believes in or teaches the overthrow of the United States by force or by any illegal or unconstitutional methods. That affidavit is on file and in effect. [fol. 189] "Mr. Scherer. Who do you think you are fooling? I ask you, Mr. Chairman, that you direct him to answer the question.

"Mr. Moulder. The Chair requests that you answer the question as to whether or not you are now a member of the Communist Party.

"Mr. Doyle. Mr. Chairman, I submit it is not a matter of requesting, that you as chairman under the law and under your assignment are directing him to answer the question.

"Mr. Moulder. The Chair directs you to answer.

"Mr. Gojack. Under the first amendment to the Constitution you have no right to even have this hearing.

"Mr. Doyle. That is your opinion.

"Mr. Gojack. Yes, and I am entitled to my opinion in this country still, though we are getting dangerously close to the point when Representative Walter can tell people how to vote in an election.

"Mr. Doyle. Why do you decline to give an honest answer? You don't suppose we will take that affidavit as the answer to this question, do you?

"Mr. Gojack. I am not going to cooperate with union [fol. 190] busters. My union is on record as the UAO-WAC, not a bad union, to fight back against McCarthys, McCarrans, Jenners and Veldes.

"Mr. Moulder. Do you want to answer or do you decline to answer the question that has been asked? Are you now a member of the Communist Party?

"Mr. Gojack. I am letting the record speak for itself."

* * * * *

[fol. 193] "Mr. Tavenner. While you were residing in Fort Wayne, was there a strike conducted in General Electric by a local of the UE?

"Mr. Gojack. Yes, sir; there was.

"Mr. Tavenner. What was the number of the local?

"Mr. Gojack. It was at that time UE local 901.

"Mr. Tavenner. Did the Communist Party participate in any manner in the conduct of that strike?

"Mr. Gojack. That strike was voted by the membership of local 901. The membership voted upon a plan of strike action which included the establishment of committees for various activities in the conduct of the strike.

"Each chairman of the various strike committees made up what was known as a strike strategy committee. That strike strategy committee met every morning in the office of UE local 901. The entire conduct of that strike was in the hands of that strike strategy committee, the various stewards and picket captains meetings that were called and also the special membership meetings that were called.

[fol. 194] "Mr. Tavenner. Who was the secretary of local 901 at that time?

"Mr. Gojack. If I remember correctly, Miss Bertha Scott.

"Mr. Tavenner. Were you a member of the strike committee?

"Mr. Gojack. No, sir; I was a member of another GE local at the time, but I served in a helpful capacity assisting the local in the conduct of the strike.

"Mr. Tavenner. Did you attend its meetings?

"Mr. Gojack. Some of them, sir.

"Mr. Tavenner. Do you recall attending a meeting on January 16, 1946, at which you presented a letter that had been written to you by the secretary of the Communist Party?

"Mr. Gojack. I don't recall presenting a letter myself.

"I recall one incident in this strike, two, as a matter of fact; one in which the local had received a communication with an offer from someone to give them copies of this paper or to furnish them to people active in the strike. There was quite a discussion about this. At one strike strategy committee meeting, as I recall, as a matter of fact, a heated discussion. The strike strategy committee [fol. 195] took a vote on it. It was not a party to the vote. I was not a party to the discussion other than I was asked a question about this paper and as a matter of fact, I recall this very clearly. Someone raised the question about does reading this so-called Communist paper, I believe it was the Worker, or the Daily Worker, does that make you a Communist. I remember in response to a question saying that, well, I read the Wall Street Journal and that didn't make me a capitalist, and that I personally read everything I could. I only had seven grades of formal schooling and I gave myself an education after that by reading a lot.

"I have read a lot. I am sorry to say that there are certain things in this country that since the rise of McCarthy are now forbidden reading material and I think that is a sad thing for this country.

"Mr. Moulder. I don't think you need to apologize about your education. You are a very brilliant man.

"Mr. Tavenner. Do you recall whether or not the communication with respect to the making available of the Daily Worker to your strike committee was addressed to you?

"Mr. Gojack. Sir, I don't recall that at all and I might say this: That the lady who took those minutes of that [fol. 196] meeting didn't like me at all and on many occasions I found that the minutes she took completely distorted my position in meetings. As a matter of fact, the closest supporter of this woman, one Dallas Smith, who was involved in another incident where some Communists gave them coffee for the strike, and I will be glad to give you the details on this use of Communist coffee in the strike, that this Dallas Smith later went on to break this union and later was engaged by the General Electric Co. and is today an employee in the personnel office paid off for helping to break that union.

"That union in that plant happens to be in a very weakened position with less than 500 members out of 9,000 workers in that shop, paying dues into the union.

"It was the activities of people like Dallas Smith who was paid off by the company and this woman who distorted the minutes who are responsible for that.

"Mr. Scherer. Was this woman who you say distorted the minutes a fellow union member at the time?

"Mr. Gojack. She never worked in the shop. She was hired as a secretary. She was then elected to secretary.

"Mr. Scherer. Of the union?

"Mr. Gojack. Of the union.

[fol. 197] "Mr. Scherer. You claim she was an employer's stooge for the purpose of sabotaging you?

"Mr. Gojack. I have no evidence to that effect. I merely stated my belief, my knowledge, that she never passed up an opportunity to do a job on me and how she colored her minutes.

"Mr. Tavenner. Now, you have charged Miss Scott with altering the minutes or improperly reporting them because you see before me a typewritten statement. Is that the reason you are doing it? You are anticipating that I am going to read you the minutes of that meeting?

"'Mr. Gojack. I don't know how many paid liars you have working for you. I know of three of my own knowledge.

"'Mr. Tavenner. Will you answer the question?

"'Mr. Gojack. As to what?

"'Mr. Tavenner. As to whether or not the reason for your attacking Miss Scott is that you see that I have before me what appears to be a copy of the minutes?

"'Mr. Gojack. I don't see what you have before you. You have all kinds of papers before you.

"'Mr. Tavenner. You have told us that the matter was presented to a meeting, and that the account of it was improperly stated by Miss Scott—before I have given you any facts in regard to it at all. Have you seen it before?

[fol. 198] "'Mr. Gojack. I know it from other reasons.

"'Mr. Tavenner. Have you seen it before?

"'Mr. Gojack. No, I know this because Mr. Dallas Smith and the group with him who are members of the IUE-CIO, the only McCarthyite union in America, a union that cooperates with you, you had material here yesterday that the IUE-CIO stole from our union office. You are using material stolen by a rival union. This same union, this same clique, Dallas Smith, who is now working for General Electric as a boss, have used and distorted what happened during this strike.

"'Mr. Scherer. What union did you call a McCarthyite union?

"'Mr. Gojack. IUE-CIO.

"'Mr. Tavenner. Let's proceed.

"'Mr. Gojack. I haven't finished my answer.

"'Mr. Tavenner. You are not answering the question. You are arguing extraneous matters.

"'Mr. Gojack. I am explaining that I know of this distortion because the IUE-CIO and Dallas Smith had used this in their attempts to wreck the union in 1949 and subsequent to that.

[fol. 199] "'Mr. Tavenner. You are saying the statement is false before you have heard me make any reference to it.

"'Mr. Gojack. I am saying it is false because the IUE-CIO have used this repeatedly.

"'Mr. Tavenner. You have stated you have never seen it before.

"'Mr. Gojack. I never have—

"'Mr. Tavenner. In other words, you are swearing something false which you haven't seen and as to which I have not yet asked you a question.

"'Let me ask you the question and see whether you say it is false: According to the minutes of January 16, 1946, which I quote:

"'“A letter was read addressed to Brother Gojack from the secretary of the Communist Party stating that they would like to donate 100 copies of the Worker, weekly paper of the Communist Party.”

"'Is that true or false?

"'Mr. Gojack. As I recall that meeting—

"'Mr. Tavenner. Will you answer the question, please, and then you may explain your answer. Is it true or false?

"'Mr. Gojack. I don't recall whether I read the state-[fol. 200] ment. The secretary read the letter first, as I remember.

"'Mr. Tavenner. That isn't an answer to the question.

"'Mr. Gojack. They asked me if I had a communication. It so happened that I had received one.

"'Mr. Tavenner. You had received it. That is the question I have been trying to get you to answer. From whom did you receive it?

"'Mr. Gojack. I don't know.

"'Mr. Tavenner. Wasn't it from the secretary of the Communist Party?

"'Mr. Gojack. I don't know.

"'Mr. Tavenner. Who was the secretary of the Communist Party of the State of Indiana at that time?

"'Mr. Gojack. I don't know.

"'Mr. Tavenner. Are you acquainted with Elmer Johnson?

"'Mr. Gojack. Let me explain my other answer—I don't know.

"Mr. Tavenner. Are you acquainted with Elmer Johnson?

"Mr. Gojack. I will get to that later. I am going to explain my other answer. The reason I don't know whether this communication came from any Communist, I have received communications from the IUE-CIO and I have [fol. 201] seen this McCarthyite union forge communications allegedly from the Communist Party for just such purposes as this.

"Mr. Scherer. You are charging another union with forgery now?

"Mr. Gojack. Just the same kind of forgery your lunatic Cecil Scott used.

"Mr. Scherer. He has mentioned Cecil Scott. Cecil Scott testified before this committee I think four years before I became a Member of Congress, but it so happens I must say in defense of Cecil Scott, that what he said in that executive testimony has been corroborated over and over again by many competent witnesses. And the testimony of Cecil Scott was never released by this committee. I have to say that.

"Mr. Tavenner. You made an explanation as to the IUE forging documents. IUE was not in existence in 1946, was it?

"Mr. Gojack. No; but people who later created this McCarthyite outfit were active in 1946 laying the groundwork for it. Dallas Smith and Bertha Scott were some of those people.

* * * * *

"Mr. Scherer. In view of your taking the first amendment [fol. 202] as to whether you were a Communist or not, I would be in sympathy with those people who were trying to get rid of your influence in union activities. I really would.

* * * * *

"Mr. Gojack. I read into this record my affidavits that are on file and I read them twice. My objection on the ground of the first amendment was to the entire hearing

here. You people have no right, this committee has a right to operate only for the legislative purposes.

"You are not operating for a legislative purpose now. You are acting as prosecutor, court and jury—and my understanding of the American system—and despite my inadequate education I think I know more about American history and American traditions and the Constitution than some people in the room; it is quite different from the way this committee is operating.

"I don't think you have the right to ask me these questions about how I think and feel, for if you do, the next step will be your hands over my shoulder in the polling booth and I don't think we want come to that.

"When I referred to the first amendment I was referring [fol. 203] to that fundamental objection to this hearing."

"Mr. Moulder. Your education is not inadequate for the line of work that you are doing. In fact, as I said a while ago, you are plenty sharp and smart.

"Mr. Scherer. Too much so.

"Mr. Tavenner. Let us get back to the question.

"Mr. Gojack. I resent your remark, Mr. Scherer. When he said I was plenty sharp and smart you said "too much so." Is it wrong to try to educate oneself in this country? Is it wrong for a labor union to try to be as smart as management?

"Mr. Moulder. Proceed."

"Mr. Tavenner. You say there was considerable discussion and difference of opinion about the acceptance of the copies of the Communist Daily Worker or Sunday Worker. I find this paragraph in the minutes:

"A general discussion as held on this matter at which time opposition was expressed to such a donation and also those in favor of accepting expressed that people can get considerable information from this paper that they cannot get from any other labor or daily paper in the way of labor news."

"Is there anything false about that statement in the report in the minutes?

[fol. 204] "Mr. Gojack. There was a very lengthy discussion, as I recall, and that paragraph describes part of that discussion, yes.

"Mr. Tavenner. And accurately; doesn't it?

"Mr. Gojack. Not completely. Accurate insofar as it goes, yes.

"Mr. Tavenner. Wasn't the report also accurate in that it stated the letter which was presented was a letter addressed to Brother Gojack from the secretary of the Communist Party?

"Mr. Gojack. I am not sure of that because if a letter had been addressed to me in my capacity as UE district council president without some reference to the GE strike, as I recall it, there was something on the envelope and I don't know where it came from about GE strike committee, something like that. That was my reason for taking my letter along there. As I remember, other people, someone in the local, received a similar letter.

"Mr. Tavenner. Who was it?

"Mr. Gojack. I don't recall. If I remember correctly, it was addressed to the district local.

"Mr. Tavenner. The minute says the document was addressed to Brother Gojack. There isn't a reference to any [fol. 205] other person. Was the vote finally that of 10 in favor and 7 against accepting this type of assistance from the Communist Party?

"Mr. Gojack. As I recall, I don't remember the exact vote; as I recall the strike strategy committee—I was not a member of it—after a very long debate voted to accept a contribution from anybody, and if the Wall Street Journal would have sent out a bundle of their papers they would have accepted that.

"Mr. Tavenner. Did you at the time, at this meeting, January 16, 1946, know the leaders of the Communist Party in the State of Indiana? That is the chairman and the State secretary?

"Mr. Gojack. I don't even know what the positions represent, I don't know.

" 'Mr. Tavenner. You did not know who the chairman was and who the State secretary was?

" 'Mr. Gojack. Mr. Tavenner—

" 'Mr. Scherer. I ask that you direct the witness to answer the question.

" 'Mr. Moulder. The witness is directed to make a direct answer to the question.

[fol. 206] " 'Mr. Donner. Will you repeat the question?

" 'Mr. Tavenner. Repeat the question, please.

" '(The reporter read from his notes as requested.)

" 'Mr. Gojack. I am not at all certain who the chairman and secretary was at a given time. I could answer that by saying, and truthfully, that—

" 'Mr. Scherer. We assume it is truthfully. You are under oath.

" 'Mr. Moulder. Proceed.

" 'Mr. Tavenner. Proceed, please.

" 'Mr. Moulder. What period of time are you referring to as to who the chairman and secretary was?

" 'Mr. Tavenner. January 16, 1946.

" 'Mr. Gojack. As I started to say before I was interrupted by that snide remark from Congressman Scherer, I could answer that question truthfully by saying that I read the press, and the Indiana press often reported accounts of activities of the Communist Party, officials of it would issue releases or get in the press. I might have known at that time who these officials were. But when I start answering those kinds of questions, I feel that we are getting to the heart of the fundamental objective to this committee in its operation here. I don't believe that this committee has a right to ask me who I know, what my political beliefs [fol. 207] are.

" 'Mr. Moulder. He did not ask you that question. He just asked you if you know who was serving in the official capacity, and as you have stated, you may have acquired that knowledge by reading the papers.

" 'Mr. Gojack. I don't think they have a right to ask me if I knew Wendell Willkie, whom I knew in Indiana.

I don't think you have a right to ask me questions relating to any political connections I may have, any friends I may have, I think we are getting into the heart of my dispute with the committee here. I don't think you have a right to go into any of this.

"Mr. Moulder. He is not asking you about your political affiliation. He is asking you if you knew who was serving—

"Mr. Gojack. Here is what he is doing. He is trying to convict me on a guilt-by-association basis, and I don't think this committee has a right to indict me, let alone convict me. I think that is a job for the courts in this land.

"I think here this committee is getting too far afield from what Public Law 601 has laid out for it. You are doing the job of the courts here and I think you are usurping the rights of the court.

[fol. 208] "(The witness conferred with his counsel.)

"Mr. Scherer. There are only two things this committee can do and that is cite you for contempt if you are guilty of contempt, and secondly, if you would commit perjury or any witness commits perjury, refer the testimony to the Department of Justice. That is all this committee can do. It cannot do anything else. It cannot convict anybody.

"Mr. Donner. Is the reporter recording the fact that I consulted with my client?

"Mr. Moulder. Yes.

"Mr. Donner. May I object to that, please?

"Mr. Moulder. The record will show your objection. As I understand the question, it has nothing to do with your association, political association, or any objection you have raised. The question is merely do you know who was serving in that period of time in a certain official capacity. Is that right?

"Mr. Tavenner. Yes, sir.

"Mr. Gojack. Since Mr. Tavenner has mentioned this name of—what was it—Johnson? I recall knowing from newspapers or discussions that name of Johnson as some

Communist official in Indiana. I don't know his position and I don't know when he was an official, and don't know the time.

[fol. 209] "Mr. Scherer. Is that the only way you know Johnson, because you read it in the newspaper? Is that the only way you know Johnson? Is that what you are telling us?

"Mr. Gojack. No, that is not the only way.

"Mr. Scherer. Tell us how well you knew Johnson.

"Mr. Gojack. I didn't know Johnson well.

"Mr. Scherer. Or how slightly you knew him. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson."

Mr. Hitz: Your Honor, I will interrupt the reading to comment that is count 2 of the indictment.

I will resume the reading without omission from the Supreme Court Record at 112.

"A. (Continuing) "(The witness conferred with his counsel.)

"Mr. Donner. I want to renew my objection if the record continues to show consultation.

"Mr. Moulder. Well, also have the record show that the witness has a perfect right to confer and consult with you at any time.

[fol. 210] "Mr. Donner. I understand.

"(The witness conferred with his counsel.)

"Mr. Gojack. I want to decline to answer that question on the following grounds: It is here where in this area of questioning that I grow fearful of the use of a paid liar like Matusow, a paid liar like Strunk, and a paid lunatic and convicted forger like Cecil Scott and any other paid informers that you may have, and because I feel as strongly—

"Mr. Scherer. Sounds like the article your counsel wrote for the Nation Magazine. I remember reading those things in that magazine.

"Mr. Gojack. If you will be patient I will give you my next comment.

"Mr. Scherer. I am very patient.

"Mr. Gojack. I agree with the Baltimore Sun and Time magazine which said that the Matusow case reminds us that stoolpigeons are as a class to be despised and not to be trusted—

"Mr. Moulder. Those are the reasons that you—

"Mr. Gojack. I haven't finished my reasons.

"Mr. Moulder. You wish to list some more reasons for refusing to answer the question?

[fol. 211] "Mr. Gojack. Yes.

"Mr. Moulder. How long do you think it will take?

"Mr. Gojack. About a half minute.

"Mr. Moulder. All right.

"Mr. Gojack. Because I fear the use of such paid informers who as a class are to be despised, I fear to answer that question and therefore I invoke the protection afforded by the first amendment to the United States Constitution and I reiterate my basic objection that the first amendment to the Constitution does not give this committee the right to inquire into any of my beliefs, any of my connections, any ideas I may have.

"Mr. Scherer. Mr. Chairman, I ask that you direct the witness to answer my question. The first amendment is no basis for refusal to answer that question.

"Mr. Moulder. Is it your question?

"Mr. Scherer. My question is—

"Mr. Moulder. The Chair directs the witness to answer the question propounded by Mr. Scherer. As I understand it, you refuse to answer for the reasons stated.

"Mr. Gojack. Yes.

"

[fol. 212] "Mr. Tavenner. Are you acquainted with Henry Aron, A-R-O-N?

"Mr. Gojack. To this and to every other question you ask me along these lines for the reasons I have stated earlier, I don't know what paid liar you have here to do a Matusow job on me.

"Mr. Moulder. We do not have any paid liars, neither has the committee ever employed any witness to testify or compensated any witness for his testimony any more than you are going to be other than for your mileage and attendance before the committee.

"Mr. Gojack. You had a Matusow who has said quite different, from what I have read.

"Mr. Scherer. We have heard about Matusow from you all day yesterday and all day today. He came from the Communist—

"Mr. Gojack. I don't know Strunk but I know he is a liar.

"Mr. Scherer. He came from the same Communist Party that you refuse to say under the first amendment whether you were a member of or not.

"Mr. Gojack. When you cite testimony here as the counsel for the committee did yesterday from a so-called [fol. 213] underground agent, Strunk, that is so fantastically a lie as that this woman who was 200 miles away ran a strike at Bay City when Bay City is a long way from Detroit, and that the strike was at a guided missile plant where Square D never made guided missiles, and when Congressman Clardy used that paid liar's testimony to try to break that strike.

"Mr. Scherer. We are getting away from the question. The question was did he know this man Aron. He is dancing around. Do you know Aron? That is the only question.

"Mr. Gojack. I have already declined. Aren't you with us?

"Mr. Moulder. On the ground of the first amendment?

"Mr. Gojack. Yes, sir; for the reasons stated, and all of the fundamental objections that I have on the ground the first amendment doesn't give you the right to even hold this hearings, let alone ask me these questions.

"Mr. Moulder. Proceed."

" "

Mr. Hitz: For the record, Your Honor, this is count 3 of the instant indictment.

I will now continue to read from the Supreme Court Record without omission.

"Mr. Tavenner. Mr. Gojack, did Mr. Elmer Johnson or [fol. 214] Mr. Aron ever appear and address a group of people when you were present?

"Mr. Gojack. To that question and to every other question like it, I repeat my basic objection that this committee has no right to ask me this question, the first amendment to the Constitution prohibits your inquiring into my political beliefs, what meetings I went to. My goodness, if you are allowed—

"Mr. Scherer. Mr. Chairman, we have heard this speech a dozen times.

"Mr. Moulder. Mr. Gojack, you have no right to object to a question being propounded to you during the proceedings of this hearing. You can decline to answer for legal reasons if you wish to do so. Why don't you give a direct answer, a direct response, rather, by answering the question or declining to answer instead of objecting to the committee even existing or the act of Congress creating it, and answer the questions propounded by counsel?

"We understand your opposition to the committee, your bitterness against the committee functions. You have clearly expressed yourself along that line, but I don't think you should proceed to make that statement every time you are asked a question.

"Mr. Gojack. Mr. Moulder, this goes to the heart of my [fol. 215] objections because—

"Mr. Moulder. Then decline to answer for the reasons previously stated on the first amendment to the Constitution, as provided by the first amendment to the Constitution if that is your reason.

"Mr. Gojack. I will do that, but I would like to finish my reply to this one. If this committee can ask me those questions, then you can ask me questions about meetings at which I attended with other trade unionists, A.F. of L. and CIO, Republican Labor Club, then some Democratic committee or itself can declare somebody being involved in 20 years of treason.

"Mr. Scherer. We are only asking you about Communist meetings. That is all we are interested in.

"Mr. Gojack. To some people like your friend McCarthy, being active in another political party involves treason, and my point is that this goes to my basic objection. You have no right to ask me the question.

"Mr. Scherer. Direct the witness to answer the question.

"Mr. Gojack. I decline to answer on the ground previously stated.

""

[fol. 217]

Afternoon Session

1:45 p.m.

The Court: You may proceed, Mr. Hitz.

Mr. Hitz: Thank you, Your Honor. For the record, Your Honor, the court will note that after the reading of the last answer by Mr. Gojack there are asterisks and then Mr. Tavenner says: "Mr. Tavenner. Are you acquainted with Russell Nixon?"

"Mr. Gojack. Yes, I know Russ Nixon.

Mr. Hitz: Then Mr. Tavenner was interrupted by my questioning him as follows:

"By Mr. Hitz:

"Q. Mr. Tavenner, may I interrupt you a moment. Mr. Tavenner, you read some of the testimony of Miss Dorothy Funn before the committee, given in—"

The Court: What page?

Mr. Hitz: Page 116 of the Supreme Court Record. I will continue to read without omission.

"By Mr. Hitz:

"Q. Do you recall the testimony to which I refer?

"A. Yes, sir.

"Q. Now, after that, and before the testimony of Mr. [fol. 218] Gojack, did the committee call before it Mr. Nixon?"

"A. Yes, sir, it did.

"Q. Will you tell me whether or not the committee asked Mr. Nixon questions concerning his own Communist Party activity?

"A. It did.

• • • • •

"By Mr. Hitz:

"Q. Have you got it, sir?

"A. Yes, sir.

"Q. Will you give us the date and place of it, and then read that portion of it?

"A. Mr. Nixon was subpoenaed before the Committee on Un-American Activities and testified on June the 9th, 1953. He was interrogated about numerous matters.

"Did you ask me to read the pertinent parts?

"Q. Yes, sir.

"Portions of Testimony of Russell Nixon Read Into Record.

"A. I read from page 1,675 of Volume 11 of the 1953 hearings of the committee.

"Q. And will you give the more precise title of that particular part of the hearings?

[fol. 219] "A. "Communist Infiltration—Government and Labor."

"Mr. Tavenner. Did other labor organizations have legislative representatives in Washington?

"Mr. Nixon. At what time, Mr. Tavenner?

"Mr. Tavenner. During the time that you held that position.

"Mr. Nixon. Oh, yes.

"Mr. Tavenner. Was there any means of cooperation developed between you as the legislative representative of your union and the representatives of other labor organizations?

"Mr. Nixon. During the period that we were in the CIO we have the CIO legislative committee, which generally co-

ordinated its activity and programs in Washington in the legislative field.

"Mr. Tavenner. During that period of time, did you become acquainted with Mrs. Dorothy K. Funn, who was the legislative representative holding a similar position to that of yours, except that she represented the National Negro Congress?

"Mr. Nixon. I decline to answer that question on the grounds already stated."

"Q. What were those grounds, sir?

[fol. 220] "A. It included the Fifth Amendment to the Constitution.

"Q. I see.

"A. Mrs. Funn testified in a hearing recently conducted in New York City on May 4, 1953; the following questions and answers occurred during that hearing.

"Do you desire that I read those? It is the same testimony that I read into evidence this morning from Mrs. Funn's testimony.

"Q. Perhaps we can omit that, if you are permitted to answer this question: On that occasion did Mr. Nixon state to the committee whether or not he had been a member of the Communist Party?

"A. After confronting Mr. Nixon with the testimony of Mrs. Funn, which I read into the record this morning, this question was asked Mr. Nixon:

"Now, Mr. Nixon, was Mrs. Funn correct in identifying you as having attended Communist Party meetings composed of legislative representatives of various organizations here in the District of Columbia?

"Mr. Nixon. As I have made abundantly clear, I decline to answer that question for reasons already stated.

"Mr. Tavenner. Did you ever sit in a Communist Party [fol. 221] meeting with Mrs. Funn?

"Mr. Nixon. The answer is the same, Mr. Tavenner.

"Mr. Tavenner. Are you now a member of the Communist Party?

" 'Mr. Nixon. For the reasons I have already made clear to you, I decline to answer that question.' "

"Q. All right, Mr. Tavenner, did he subsequently answer those questions to the committee?

"A. No, sir.

"Q. Has he ever?

"A. No, sir.

"Q. Till the time that these questions were asked Mr. Gojack concerning Mr. Nixon?

"A. That is right.

"Q. Does the committee now know whether Mr. Nixon was a member of the Communist Party from any testimony of his own?

"A. No, sir. The committee has not been able to get any.

"Q. From testimony of his own?

"A. Has not been able to get any testimony from Mr. Nixon regarding his alleged Communist Party activities [fol. 222] in this country or abroad.

"Portions of Testimony of John T. Gojack Read Into Record.

"Q. Now, will you read the rest of the questions that were asked of Mr. Gojack on this subject, the Nixon subject?

"A. 'Mr. Tavenner. Was he known to you to be a member of the Communist Party?

" 'Mr. Gojack. Russ Nixon is known to me to be a Washington representative, legislative representative of our union.

" 'Mr. Tavenner. Yes, we know that. Will you answer the question, please?

" 'Mr. Gojack. To this question, sir, and any question about any other individuals regarding political beliefs or affiliations, sir, I respectfully decline to reply on the grounds on which I am challenging the jurisdiction of this committee.

" 'Mr. Moulder. Do you not realize that the courts have

held that the Communist Party is not a political organization, that it is not a political party?

"Mr. Gojack. Frankly, I don't know what it is in terms of the court decisions. I read the other day where a fellow [fol. 223] was convicted in Chicago for 5 years for being a member of it, under the Smith Act. I am not keeping pace with these court decisions.

"Mr. Scherer. Then it would not be a political party if you could be convicted and sentenced for 5 years for belonging to it. It is a criminal conspiracy as much as any other conspiracy on the Federal criminal statutes.

"Mr. Doyle. Mr. Scherer, may I supplement your observation by saying, assuming that the finding of the Federal court was according to the evidence and law, it would mean that this committee could not possibly be inquiring into your political affiliations when we are asking you whether or not you are a member of the Communist Party, because the court has held that the Communist Party is not a legitimate political party, as I understand Mr. Scherer's observation.

"Mr. Gojack. Sir, I am neither a lawyer nor a Government expert on this question. I remember reading in the New York Times the other day where a Multer, one of your fellow Congressmen from Brooklyn, said that under this new law to outlaw Communists, the Communist Control Act of 1954, the one that Humphrey tacked some amendments onto—according to that one, he stated President Eisenhower could be proven a Communist. I don't know what the legal—

[fol. 224] "Mr. Doyle. May I just sincerely observe, Mr. Gojack, you may not be a lawyer, but you are a very able and very well read young man, apparently. You are a very well informed labor union leader. I say that because that is my impression from your testimony. You do not need to apologize for not being well read and well informed, because manifestly you are, and you are a very able witness, very, very well informed in all the areas in which you are being questioned.

"Mr. Gojack. Thank you, Mr. Doyle.

"Mr. Scherer. The question still is—

"Mr. Moulder. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party? I am just asking whether or not you know that."

Mr. Hitz: I am interrupting the reading and stating to the court and for the record that that is count 4 in this indictment.

"A. Mr. Gojack. Sir—

"Mr. Moulder. Do you or do you not know? I am not asking you to state whether or not he is, but whether or not you know.

"Mr. Gojack. Sir, I respectfully submit that that question cannot be propounded to me by this committee because [fol. 225] it seeks to expose someone, and I don't think that the law under which this committee operates was set up for exposure purposes. My understanding is that that is what the courts are for, to expose people.

"Mr. Scherer. Their job is to judge, not to expose. It is the job of this committee to expose Communists. That is one of its primary duties, to expose communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions.

"Mr. Moulder. Do you decline to answer that question?

"Mr. Gojack. Yes, sir, on the grounds previously stated.

"Mr. Tavenner. May I suggest that he be directed to answer.

"Mr. Doyle. I move he be directed to answer, Mr. Chairman.

"Mr. Moulder. You are directed to answer the question.

"Mr. Gojack. Sir, I respectfully decline on the grounds previously stated.

“ “ • • • • • ”

[fol. 226] "Mr. Tavenner. You have volunteered that you engaged in many meetings in what you have termed in behalf of peace. You are familiar with the Communist Party line, I suppose, with regard to the Stockholm peace appeal and various others that followed it; are you not? You are not?"

"Mr. Gojack. I am not even sure what you mean by the question.

"Mr. Tavenner. Did you take an active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?"

Mr. Hitz: Your Honor, I am interrupting the reading to note that is count five of this indictment.

I will now continue to read without omission.

"A. (Continuing) 'The witness conferred with his counsel.)

"Mr. Gojack. Sir, on this and all other questions that deal with my activity in any organizations, political or otherwise, what I think, how I feel, what I did about peace, whether I went on a specific delegation or not, and with whom—to all such questions I must respectfully decline to answer on the ground that the first amendment to the Constitution does not give the committee the right to pry into my beliefs.

[fol. 227] "Mr. Scherer. Mr. Chairman, I ask you to direct the witness to answer.

"Mr. Moulder. Yes, Mr. Gojack, you are directed to answer the question.

"Mr. Gojack. I respectfully decline to answer for the reasons stated.

"Mr. Tavenner. I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. That is what I am interested in. My question

of you is to determine what knowledge or information you had on the subject.

"Mr. Moulder. May I say, Mr. Tavenner, in connection with your statement, that the so-called peace moves on the part of the Soviet Union were being instigated over here as propaganda so as to prevent any opposition to their aggression and domination of the free world.

"Mr. Doyle. Mr. Chairman, may I add to those two fine statements that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or [fol. 228] otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions, if you know anything about it, the extent to which they were using it then and are using it now for their conspiratorial purposes.

"That is all, Mr. Counsel.

"Mr. Tavenner. The documents which I handed you have dates which are very significant. The letter from Mr. Nixon was on March 27, which was after the so-called peace pilgrimage to Washington, which occurred on March 15; but the letter which he enclosed from the Communist-dominated outfit in Paris was dated February 16, 1951. Normally it would have been expected to have been disseminated before your peace pilgrimage here.

"May I ask you whether or not that letter had any influence upon your action then or later?

"Mr. Gojack. Which letter are you referring to?

"Mr. Tavenner. The letter from Mr. Nixon.

"Mr. Gojack. The letter from Mr. Nixon had no influence on any actions I took with regard to peace. I have acted on my own initiative on that question—letters to the editor at home, and delegations, and many activities.

[fol. 229] "Mr. Tavenner. If you have disseminated among all your unions, representing thousands of members,

this propaganda document from Paris, then you were performing a substantial chore for the Communist Party; weren't you?

"Mr. Gojack. Sir, I didn't testify that I circulated that. I testified that I remember vaguely that on one such communication from some trade union in Europe, which I showed around to people whom I met in my work, someone asked me if they could have extra copies of that. I remember mimeographing that, I am not at all certain—I didn't testify that it was this thing here, and it wouldn't have been circulated to thousands, sir. If it were a matter of something that came from our Washington office or our national office and didn't go directly to the locals, we sent it to about 25 local unions. Then the local unions themselves decided what to do with it, whether to file it, read it at a meeting, or throw it in a waste basket.

" " " " " " " " " " " "

"Mr. Tavenner. Now, I hand you the February 1, 1951, issue of the Daily Worker, at least a photostatic copy of it. It relates to the American Peace Crusade. It gives the names of those who were the initial sponsors of it. I will ask you to state whether or not there appears among the list of sponsors the name of John Gojack, international [fol. 230] vice president, UERMWA, Fort Wayne, Ind.

"(Document handed to the witness.)

"Mr. Gojack. This document appears to be a photostat of the paper you described, with the notation that 65 notables—

"Mr. Tavenner. Will you answer the question, please. Your statement is not responsive to my question.

"Mr. Gojack. I am sorry.

"Mr. Tavenner. The question is: Will you examine to see whether or not your name is listed as one of the original sponsors of that organization?

"Mr. Gojack. On this paper you show me, this photostat, rather, my name is listed down there.

"'Mr. Tavenner. Does there not appear above your name the statement, "other original sponsors include"?"

"'Mr. Gojack. After a listing of Thomas Mann, the Nobel Prize winner, four Protestant bishops and leading scientists, writers, Negro leaders, and trade unionists, the language appears which you read on the paper you handed me: "Other initial sponsors include."

"'Mr. Tavenner. Does your name appear among those included as original sponsors?"

[fol. 231] "'Mr. Gojack. Yes; on this document here, my name appears along with some A. F. of L. and CIO leaders, also.

"'Mr. Tavenner. Yes; I know. That is a voluntary statement by you. What I want to find out is, Who solicited you as one of the original sponsors?"

"'Mr. Gojack. On that question, sir, I respectfully decline to answer on the grounds previously stated.

"'Mr. Tavenner. What method was used to get you as an original sponsor.'"

Mr. Hitz: Your Honor, I am interrupting the reading to advise you that the question: "What method was used to get you as an original sponsor," is count No. 6.

I will now continue to read without omission.

"'Mr. Gojack. I respectfully decline to answer, sir, for the reasons previously stated.

"'Mr. Scherer. I ask that you direct the witness to answer the last question.

"'Mr. Moulder. The witness is directed to answer the question.'"

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[fol. 232] Mr. Hitz: Mr. Donner at this time will read the cross-examination of Frank Tavenner.

Mr. Donner: My name is Frank Donner. I am now going to read from the record dealing with the cross-examination of Frank S. Tavenner. This is from the Supreme Court Record, page 137.

"Cross Examination.

"By Mr. Donner.

"Q. Mr. Tavenner, you were counsel at the hearing at [fol. 233] which Mr. Gojack testified, is that correct?

"A. Yes, sir.

"Q. In connection with that hearing, was there a motion filed on behalf of Mr. Gojack?

"A. Yes, there was."

Mr. Donner: May the reporter mark for identification a document, defendant's No. 1, statement of objections to hearing and motion to vacate subpoenas together with two newspaper clippings attached thereto?

The Court: Yes, sir.

(Defendant's Exhibit No. 1 was marked for identification.)

"Q. Now, I show you a document headed, 'Statement of Objections to Hearing and Motion to Vacate Subpoenas,' and two attachments, and ask you whether that is a copy of the motion which was filed.

"A. I do not know, sir. I have never seen the motion.

"The Court: Oh, that was the basis for your offering the motion?

"Mr. Donner: Yes.

"The Court: I thought it was a motion you were just making to me at the beginning of the case.

"Mr. Donner: No, Your Honor.

[fol. 234] "The Court: You read it to me at the beginning of the case.

"Mr. Donner: I read it to you just to indicate what the issues were.

"The Court: Oh, I see.

"By Mr. Donner:

"Q. You have not seen the motion?

"A. No, sir.

"Q. Do you know whether a copy of the motion is in the files of the committee?

"A. I know that the motion was filed. I have never actually seen it, either it or a copy of it.

"Mr. Donner: Well, Your Honor, we subpoenaed the motion and assumed that Mr. Tavenner would bring it with him.

"By Mr. Donner:

"Q. Do you have a copy of it here?

"A. I do not.

"Mr. Rein: Mr. Hitz does.

"Mr. Hitz: I have a copy. If you will let me see yours I can see whether this is the same as the one I have in the file.

"The Court: You ought to use the original.
[fol. 235] "Mr. Donner: Do you have the original?

"Mr. Hitz: No, it is a copy.

"Mr. Rein: Your Honor, the committee didn't have the original of the motion, but just a copy that they had made. I don't know why, but that is all they had in the committee files.

"(Paper produced by Mr. Hitz.)

"Mr. Hitz: Did you have a question pending?

"Mr. Donner: No, I don't.

"Mr. Hitz, is this a copy of a motion which was filed with the committee?

"Mr. Hitz: I will concede that it is an accurate copy of the motion filed.

• • • • •

[fol. 236] "Mr. Donner: Will Mr. Hitz concede that this motion and the clippings are a copy of the motion which we filed with the committee?"

"Mr. Hitz: I would like to do it this way: I won't object to their authenticity or accuracy, so that I don't affirmatively concede anything, but I won't object to them on that ground. That will accomplish his purpose. I will have an objection, perhaps, to their relevancy and materiality, when that time comes.

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[fol. 237] Mr. Donner: Now, there is argument that goes on to page 149 and I see no point in repeating it for this record but I do now offer that motion in this case, together with the attachments as defendant's No. 1 and I should add, [fol. 238] Your Honor, that the motion is subject to the same kind of stipulation with respect to the accuracy of the attachment as was made in the original case and I guess that is government exhibit No. 14, isn't it? It is a joint exhibit.

Mr. Hitz: It relates to it, yes.

The Court: Now, Mr. Hitz, you heard the statement Mr. Donner just made and is that agreeable to you, sir?

Mr. Hitz: Except to the last, I don't know what that means about it being a joint exhibit.

Mr. Donner: I was simply describing the motion as covered in part by the stipulation that we filed with the court and which is government exhibit No. 14.

Mr. Hitz: I agree.

The Court: Now, I am understanding there is no objection to the motion nor the attachments thereto insofar as the authenticity or accuracy thereof be concerned but he does reserve the right to challenge the materiality and relevancy of it as recited therein?

Mr. Hitz: Yes.

The Court: I will receive it under those stated conditions.

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[fol. 242] Mr. Hitz: Although we objected at the first trial of this case on the grounds of relevancy and materiality of

that motion against the subpoenas directed to the committee and the attachments, Judge Pine, nevertheless, admitted it and I think in view of later developments in the case law, it would be unwise for us now to object on those or any other grounds and, therefore, we do not.

The Court: Then they are received, sir.

(Defendant's exhibit No. 1 was received in evidence.)

Mr. Donner: Before I read defendant's exhibit No. 1, may I offer for the record of this trial page 153 and—excerpts from page 153 of government exhibit 12 which is the statement of Mr. Moulder purporting to rule on the motion?

The Court: Statement of Mr. Moulder doing what, sir?

Mr. Donner: Purporting to rule on the motion, defendant's exhibit No. 1 now in evidence.

That is the motion, Your Honor, which comprises the statement of objections to the hearings and to quash the subpoenas that were filed at the House Committee hearings and is now in evidence in this case.

The Court: Very well.

Mr. Hitz: I have 153 of 12.

Mr. Donner: May I see it?

Mr. Hitz: Yes, I wish you would.

Mr. Donner: I am reading now from page 153 of government exhibit 12.

"Mr. Moulder. Mr. Tavenner, at the beginning of the hearings, counsel for John T. Gojack, Julia Jacobs, and Lawrence Cover, filed a statement of objections to hearings and a motion to vacate the subpoenas. At that time the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, nunc pro tunc, the objections and motion to vacate subpoenas are overruled.

"Mr. Donner. May the motion be incorporated in the record, sir?

"Mr. Moulder. It is filed. It will be marked 'filed'."

• • • • •

[fol. 245] "By Mr. Donner:

"Q. Mr. Tavenner, taking you back again to the transcript, page 20,—

"Mr. Hitz. Is that the report or the full transcript?

"Mr. Donner. I am sorry, Mr. Hitz; that is the full transcript.

"By Mr. Donner.

"Q. (Continuing) —you will recall that Mr. Moulder says: 'You may file the motion.'

"Now do you recall whether I physically handed you that motion?

"A. Yes, sir, I do. You handed me the motion and I handed it up to the chairman.

"Q. And you don't know what happened to it after that?

"A. Yes, I know that during the progress of the hearing the chairman made some announcement in regard to it. My recollection is that he announced that the committee had considered it and denied it.

"Q. Were you present when the committee considered it?

"A. I was present, but took no part in it, as this happened while the committee was in session, and during the [fol. 246] period that I was either examining a witness or preparing to examine one.

"Q. Now, calling your attention to the annual report of the committee, Government Exhibit 10—"

In this case it is now government exhibit 13.

"—at page 1,—that is the annual report for 1955,—

"A. Yes, sir.

"Q. (Continuing) —do you see, about five lines or six lines from the bottom, at the opening of each public hearing, the presiding chairman clearly outlined the purpose of the investigation and hearing?

"The Court: Is this page 10?

"Mr. Donner: This is page 1, Your Honor of government Exhibit 10."

Mr. Donner: It was 10 in the old record and 13 in this case.

"A. Yes, sir.

"By Mr. Donner:

"Q. That practice, of course, governed the hearing in which Mr. Gojack was involved; isn't that correct?

"A. Yes.

[fol. 247] "Q. Is that practice pursuant to some rule that has been adopted by the committee?

"A. No, there has been no rule adopted by the committee."

May this former defendant's exhibit 4 be marked for identification as defendant's exhibit 2.

The Court: Yes, sir.

(Defendant's exhibit No. 2 was marked for identification.)

The Court: Is that a pamphlet of the rules?

Mr. Donner: Yes, it is. I happen to have another one and would you like to have it?

The Court: Yes. Thank you.

Mr. Donner: I will now continue to read.

"By Mr. Donner:

"Q. I show you defendant's exhibit 4 for identification—" this is now defendant's exhibit 2—"and ask you what that is.

"A. This is a set of printed rules of the Committee on Un-American Activities.

"Q. Will you tell me when that was adopted?

"A. In July 1953.

"Q. Did that govern the hearings in this case?

"A. Yes, it did.

"Mr. Donner: I offer this, Your Honor.

[fol. 248] "Mr. Hitz: No objection."

Mr. Donner: I would like now to read from defendant's exhibit 2, Rules 1 and 2.

Mr. Hitz: Mr. Donner, excuse me. I don't think you offered that in evidence.

Mr. Donner: I am sorry. I now offer that in evidence.

The Court: Is there objection?

Mr. Hitz: May I see that?

Mr. Donner: Yes, this is the one that is the original that was offered in evidence.

Mr. Hitz: No objection.

The Court: It is received.

(Defendant's exhibit No. 2 was received in evidence.)

The Court: What are you going to read, sir?

Mr. Donner: 1 and 2, Your Honor. I am not positive that the copy I offered you conforms in all respects to this.

The Court: I will check it with you as you read it.

Mr. Hitz: I think the way to determine it, would be to look on the inside front cover and if it says printed July 15, '53, that is what you have.

Mr. Donner: Yes, that is right.

[fol. 249] The Court: That is what this is.

Mr. Donner: Very well. "Rules of Procedure: 1. Initiation of Investigations: No major investigation shall be initiated without approval of a majority of the Committee. Preliminary inquiries, however, may be initiated by the Committee's staff with the approval of the Chairman of the Committee.

"Rule 2, Subjects of Investigation: The subject of any investigation in connection with which witnesses are summoned or shall otherwise appear shall be announced in an opening statement to the Committee before the commencement of any hearings; and the information sought to be elicited at the hearings shall be relevant and germane to the subject as so stated."

• • • • •

"By Mr. Donner:

"Q. Now, the committee's annual report in 1954—that is government exhibit—" that is government exhibit 11—"and the annual report in 1955, government exhibit—" in this trial 13—"both make reference, do they not, to a file and reference service?

[fol. 250] "A. Yes, sir.

"Q. The committee maintains a service dealing with people in whom it is interested; is that correct? That is, its files contain dossiers or records of people in whom it is interested?

"A. Well, I don't know what you mean by 'in whom it is interested.' It maintains a considerable file of information relating to so-called un-American activities and other matters.

"Q. And it has a file covering individuals, isn't that correct?

"A. Individuals are referred to in the files.

"Q. How many individuals are covered in those files?

"A. I have no idea.

"Q. Can you approximate it?

"A. No.

"Q. Would you say there were five thousand?

"A. Oh, I assume it is a very large number, much larger than that.

"Q. Does the committee, on request, make available material in these files to people who inquire about it?

"A. No, not generally.

"Q. Well, to whom does it make this material available? [fol. 251] "A. It makes it available to all investigative agencies of the Federal and the State governments, and to members of Congress.

"Q. If I wrote to the committee and asked for information on John Jones, whether you have any information as to whether he has a subversive background, would you send me a reply?

"A. No, sir.

"Q. If I wrote to my Congressman and asked him to get the information about John Jones—

"A. If the Congressman advised the committee that he desired information, the Congressman would be furnished certain information from the public records and files of the committee, not investigative information."

Mr. Donner: Would the reporter please mark this defendant's exhibit No. 3 for identification?

(Defendant's exhibit No. 3 was marked for identification.)

Mr. Donner: Would you mark this as defendant's exhibit No. 4, please.

(Defendant's exhibit No. 4 was marked for identification.)

Mr. Donner: I will now continue to read.

[fol. 252] "By Mr. Donner:

"Q. I show you defendant's exhibit 5—" in this trial defendant's exhibit 3—"and ask you what this is, Mr. Tavenner.

"A. This appears to be a report made by the committee on Un-American Activities. You asked me to look into it on the first day of my appearance here, and I find that on May 5th, 1953, this information was given to a member of Congress.

"Q. Do you know what members of Congress it was given to?

"A. No, I do not.

"Q. By the way, who was the subject of that report?

"A. John Thomas Gojack.

"Q. Can you tell me how many requests you have for information in your files about Mr. Gojack?

"A. No, sir.

"Q. Does the committee keep a record of that?

"A. It keeps a record of the requests that it obtains, yes.

"Q. Can you find that out without too much trouble?

"A. Well, I think I can.

"Q. Very well; I would like you to do that.

"Now, then, this is a copy of a document drawn from the files of the committee; is that right?

[fol. 253] "A. I recognize that this is a document prepared by the staff of the Committee on Un-American Activities.

"Q. How many pages does it contain?

"A. Three pages.

"Q. I show you defendant's exhibit 6 for identification—" this is now defendant's exhibit No. 4—"and ask you what that is—ignoring, of course, the underlining.

"A. Yes, I am paying no attention to that.

"Yes, sir, I can identify this as apparently a copy of a document or report prepared by the Committee on Un-American Activities.

"Q. Is the second document, that is, defendant's exhibit 4 for identification, larger, does it contain more information than 3?

"A. It does not.

"Q. Does it contain the same amount of information?

"A. The only difference—"

Mr. Donner: I think it will save time to interpose the new numbers?

The Court: I understand you.

Mr. Hitz: Yes, indeed, that is fine.

Mr. Donner: "Does it contain the same amount of information?" [fol. 254]

"A. The only difference between the two reports is that the second report, the one you have just now handed to me, bearing date of August 20, 1963, contains a paragraph—the first paragraph, which is not contained in the earlier report of May 5th. I may explain that by this statement: that this paragraph referred to says that the documents were obtained from the public records and files and publications of the committee; that it is not construed as representing the results of an investigation by the committee, nor findings of the committee; it should be noted that the individual referred to is not necessarily Communist, a Com-

munist sympathizer, or a fellow traveler, unless otherwise indicated.

"This type of a description prior to the middle of 1953 was usually contained in the letter forwarding the report to the Congressman, but in 1953, the practice was adopted of making this a part of the report itself.

"Q. And since then, that practice has been abandoned, is that it? It is now included in a covering letter; is that right?

"A. It is now included in the report instead of in a covering letter.

[fol. 255] "Q. I see.

"A. That is the only difference, with the exception of the language in the first sentence of the second paragraph.

"Q. Now, does the committee— Of course, the committee constantly adds to the information in its files; is that correct?

"A. Sometimes it does and sometimes it doesn't.

"Q. Whenever information becomes available?

"A. It depends entirely upon the character of the information.

"Q. In other words, it would be possible now for some Congressman to request the committee to give him material on Mr. Gojack which would be larger in volume than what you have here?

"A. There would be a reference now to his testimony before the committee.

"Q. Is the caption of these two exhibits a caption which is from the committee's stationery, information from the files?

"A. Yes.

"Q. Would you say that is a reproduction, a physical reproduction of what was transmitted to the person who requested the information?

[fol. 256] "A. I am not certain. I am certain as to Exhibit No. 4. I believe it to be as to Exhibit No. 5.

"Mr. Donner: I would like to offer these, Your Honor, of course, without the underscoring."

Mr. Donner: I would at this time like to offer these two documents that were discussed in that passage I read by Mr. Tavenner. That is defendant's exhibits 3 and 4. May I hand them up? Have you seen these?

[fol. 260] The Court: Certainly not when you have won your point, sir.

I will receive them, and I think we all agree that the probative value and how material they may be, will be a matter of evaluation and you Gentlemen will doubtless make use of the opportunity at the time of argument.

I do understand, in addition to what Mr. Hitz has said, that the mere fact that the committee may be vested of information, such as it may acquire at an executive session, does not constitute a bar to a re-hearing and I think several of the court's have said that but we do not have to debate this now.

"By Mr. Donner:

"Q. Now, Mr. Tavenner, you referred yesterday to the fact that the committee issued a release stating that the committee would hold hearings in Fort Wayne. Is that correct?

"A. I do not believe I described it that way. The committee did not issue a release, but we found a newspaper clipping quoting a statement made by the chairman with regard to the matter. There was no committee release prepared that I am able to find or learn anything about.

"Q. That statement was made on February 9th. Was the paper dated February 9th?

"A. That I do not recall.

"Q. I think you testified yesterday that it was dated February 9th.

"A. I testified that it had appeared on February 9th, I believe, yes.

"Q. Yes.

"Now, when was Mr. Gojack subpoenaed?

"A. The subpoena was dated February 10th. Service was obtained on February 15th.

"Q. Is it a practice of the committee to announce in advance that people will be subpoenaed before they receive the subpoena?

"A. It is not the practice. It has occurred."

Mr. Donner: Now, turning to the next page—well, page 156.

"By Mr. Donner:

[fol. 262] "Q. You remember yesterday you testified about a letter which you read into the record, dealing with the Paris metal worker's union. You recall that?

"A. Yes, I do.

"Q. You said that that letter was turned over to the committee by a police agency?

"A. Yes, sir.

"Q. Can you tell me what police agency turned that letter over?

"A. I do not know just which it was. I do not know what city.

"Q. You mean it was a local police agency in some city?

"A. That is the information that I had, yes.

"Q. Can you verify what city that was?

"A. Yes, I can verify it."

Mr. Donner: I will now read from page 195, recross-examination.

"By Mr. Donner:

"Q. Mr. Tavenner, I believe I asked you before the recess to ascertain how many requests there were in the committee files for information pertaining to Mr. Gojack. Were you able to determine that?

[fol. 263] "A. Yes, sir. I had the files examined from 1950 through the year 1954 for that information, and I am advised that the files show that reports were furnished to Members of Congress during those years as follows:

"1950, one report; 1951, two reports, 1952, one report; 1953, ten reports; and 1954, two reports.

"Q. Now, with respect to the other matter that I interrogated you about, the police agency which turned over to you the letter which appears at page 139 of the hearing involving Mr. Gojack, can you identify that agency?

"A. I now know the agency.

"Q. Will you tell me what it is, please?

"The Witness: If it please the court, I respectfully decline to answer the question on the ground that it is confidential information which I am not permitted by the rules of the committee to give out, of an investigative character."

Mr. Donner: Off the record.

(A discussion was held off the record.)

The Court: On the record.

Mr. Donner: I now assert on behalf of the defendant in this trial, that the defendant acquiesces in the claim of privilege that was made in the trial of Mr. Gojack.

.

[fol. 289] Mr. Donner: No. May I just look at that, please?

The Court: Yes, certainly.

Mr. Donner: May I now read from the interrogation of Mrs. Jacobs and this appears at page 39 of government exhibit No. 12?

"Mr. Tavenner. Will you examine the document again and state what address appears under the name 'Julia Jacobs'?

"(Witness examining document.)

"Miss Jacobs. I decline to answer that question on the same grounds.

"Mr. Tavenner. Will you read into the record, please, what it is? I am not asking you whether it is true or false at this time.

"Miss Jacobs. The address is 2303 Florida, Fort Wayne, Ind.

"Mr. Doyle. May I ask, Mr. Chairman, under what name that address appears. That is in connection with what name?

[fol. 290] "Mr. Tavenner. That address appears under the name of the witness, Julia Jacobs.

"Mr. Doyle. Thank you.

"Mr. Tavenner. With a notation under the address of 'Residence address of witness.'

"Have you ever lived at 2303 Florida, Fort Wayne, Ind.?

"Miss Jacobs. Yes.

"Mr. Tavenner. When did you live there?

"Miss Jacobs. I lived there for part of the period when I first went to St. Joe—to Fort Wayne.

"Mr. Doyle. Mr. Chairman, may I ask the witness, did I not just hear you say a minute ago that you did not recall ever living in Fort Wayne?

"Miss Jacobs. No.

"Mr. Tavenner. Mr. Doyle, if you will permit me to say so, I asked her the question whether she lived there in December 1951.

"Mr. Doyle. I see.

"Mr. Tavenner. What type of residence was 2303 Florida, Fort Wayne, Ind., an apartment house?

"Miss Jacobs. Yes.

[fol. 291] "Mr. Tavenner. It was not your address on December 12, the date of this application, was it?

"Miss Jacobs. It is a little difficult for me to remember exactly. I don't remember the exact date that I resigned as secretary of the local, and then I went to La Porte. I may have gone to Fort Wayne for a short period, a week or something like that.

"Mr. Tavenner. I asked you specifically about that before, and you stated you had not. If you were in error

in that, I would like you to correct it, if you desire to correct it. Were you living at Fort Wayne at the time of the execution of this document on December 12, 1951?

"(The witness conferred with her counsel.)

"Miss Jacobs. As I said earlier, I didn't keep a diary or anything, but during this period of time there might have elapsed a period of week or two that I wasn't working. I don't know. I just can't remember the details. I could have gone from St. Joseph to Fort Wayne, and then to La Porte.

"Mr. Tavenner. Did you have a contract of rental for 2303 Florida, Fort Wayne, Ind.?

"Miss Jacobs. No.

"Mr. Tavenner. What arrangements did you have for rooming quarters, if this were the true address of your residence?

[fol. 292] "Miss Jacobs. This is the apartment of the Gojack family.

"Mr. Tavenner. You gave Mr. Gojack's family's apartment as your residence. Why did you do that?"

Mr. Donner: That is the portion I was interested in reading into the record and I would like to call the court's attention to the fact that the interrogation begins on page 20 and that the questioning that I have just read occurs on pages 39 to 40 of the record, and during that period of time, Miss Jacobs was the only witness testifying.

Mr. Hitz: That is exactly what I was going to read, Mr. Donner, because it shows that Mr. Gojack heard the testimony of Miss Jacobs.

Mr. Donner: It shows that he heard that questioning and answer. It doesn't show anything more than that.

Mr. Hitz: All right.

I would now like to read to the court on page 43 of this document, the latter one half about, where it says, "Testimony of Julia Jacobs, Accompanied by Her Counsel, Frank J. Donner—resumed" and to read Mr. Doyle's statement which is the last one on that page.

"Mr. Doyle. Miss Jacobs, may I just make this statement [fol. 293] to you preliminary to several questions I wish to ask you: I want to make it clear that none of my questions are intended to go into any political belief by you of any sort. Public Law 601 challenges this committee as a subcommittee to go into subversive activities and propaganda. It is expressly so. I want to frankly state that my few questions to you will be directed to you on that basis. That is to see the extent to which you will cooperate with your own United States Congress in ferreting out, uncovering, and revealing to Congress and the people any person or group of persons whether they are in the Communist Party or not, who may be subversive. I assume, unless you answer otherwise, that you, being an American citizen are more interested in your American Government than you are in the Communist Party. I also assume in my question that you, being an employee of a labor union, already know what this committee knows: that American 'unionism' and the Communist Party objectives are not the same.

"I wish also to state for your information that my questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist Party in your experience has undertaken to influence labor unions wherever you know anything about them.

[fol. 294] "I made that frank statement to you so that you will know in advance what I am trying to get at.

"I noticed a very good memory in your testimony this morning, dating away back to 1945 and 1946 and 1951; and you remembered right down to the exact month in 2 or 3 places. I want to compliment you on the memory you have, apparently, for dates and incidents away back. I know you will be very helpful to me in my few questions.

"May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is

whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any other group to their own Communist Party objectives.

"The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening [fol. 295] of legislation dealing with subversive activities. I say that, contrary to what some of the publicity has been down in your neighborhood to the contrary.

"I am referring to this document in which the picture of Mr. Gojack appears. This is the document which you identified as having your address thereon, 2303 Florida. Do you now recall the document that I refer to, or shall I bring it to you?"

.

[fol. 322] Direct examination.

By Mr. Hitz:

Q. Mr. Appell, will you give your full name, please.

A. Donald T. Appell. A-p-p-e-l-l.

Q. Your occupation, sir?

A. I am the chief investigator for the Committee on Un-American Activities, standing committee of the House of Representatives.

Q. How long have you been with the Committee?

A. Since February 1947.

Q. Did you have anything to do with the investigation which resulted in the hearings on February 28, March 1, and April 25, 1955, at which appeared John T. Gojack?

A. I was the investigator in charge of those.

Q. Do you see Mr. Gojack here today?

A. I do, sir.

Q. Unless he stands, will you come down and point him out?

The Court: Is there any question?

Mr. Donner: No question.

By Mr. Hitz:

Q. Mr. Appell, did you see Mr. Gojack on February 28, [fol. 323] 1955?

A. I did, sir.

Q. Was that in Washington, D. C.?

A. It was, sir.

Q. Where was it?

A. In the Old House Office Building, Caucus Room.

Q. Was that the room in which the hearings were held at which Mr. Gojack testified?

A. They were. It is.

Q. Were you present when Mr. Gojack testified?

A. I was.

Q. On February 28?

A. Yes, sir.

Q. And again on March 1?

A. Yes, sir.

Q. Approximately what time of day on February 28 did Mr. Gojack testify?

A. I have a hard time approximating it. But I would say eleven-thirty, somewhere around there. Eleven, eleven-thirty.

Q. Did you have any duty on that occasion with respect to determining whether the witnesses who appeared actually were present prior to the hearing commencement?

[fol. 324] A. As the investigator in charge of the hearing, I ascertained that witnesses under subpoena were present.

Q. Can you recall now who the witnesses were who appeared that day?

A. Well, the first witness was Julia Jacobs.

Q. Go ahead.

A. Mr. Gojack, and then there was a third witness whose name I do not now recall.

Q. Were you present just prior to the commencement of the hearing on that day, February 28?

A. I was, sir.

Q. Did you see Mr. Gojack in the hearing room?

A. I did, sir.

Q. Did you see him with anyone else?

A. As I remember, there was a conversation between Mr. Gojack and Mr. Jacobs, which—

Q. Mr. Jacobs?

A. Miss Jacobs, I am sorry. Which broke up when the Committee was called to order.

Q. And would that be the first call to order of the Committee for the day?

A. Yes, sir.

Q. In the morning?

[fol. 325] A. Yes, sir.

Q. I would like to show you Government 12, which is a copy of the Government print of the Investigation of Communist Activities in the Fort Wayne, Ind., Area, and ask you if you would turn to the contents page and look at the witnesses who it says there were called, and I would then ask you if you are refreshed on any recollection as to the order in which they appeared after Miss Jacobs.

A. No. Of course this refreshes my mind as to the third witness that day, whose name I could not recall. And this is the order in which they were called, according to my recollection.

Q. So refreshed, your recollection is they appeared in what order?

A. Miss Jacobs, Lawrence Cover, and Mr. Gojack.

Q. And that is Julia Jacobs?

A. Yes, sir.

Q. And I wonder if you would look at page 19, being the first page of that print of those hearings, and tell me can you refresh your recollection therefrom as to the time of day when the hearings commenced on February 28?

Mr. Donner: I object to that. I think he ought to be asked without the benefit of the document.

[fol. 326] Mr. Hitz: I asked him and he said he couldn't recall.

The Court: Do you recall when the hearings started that day?

The Witness: At the exact time, independent of this?

The Court: Yes.

The Witness: No, I do not. It was called for ten o'clock, so it was shortly thereafter, sir.

By Mr. Hitz:

Q. Examining page 19 of the hearing, is your recollection refreshed as to a more precise time for the commencement of the hearing?

A. It is.

Q. And what is your recollection refreshed?

A. Ten-twenty A.M.

Q. Was it prior to 10:20 a.m. that you saw Mr. Gojack and Miss Jacobs talking in the Caucus Room?

A. Yes, sir.

Q. About how long before 10:20 do you recall that to be?

A. It would be the last five minutes. Say, 10:15 to 10:20, time when I would probably have gotten up to the Caucus [fol. 327] Room.

Q. Will you tell us what took place from then on, up until the time and shortly after the Committee called the session to order.

A. Well, as I remember, with the Committee being called to order the witnesses took seats and, my memory, Mr. Gojack and Miss Jacobs took a seat in the very front row of the seats in the Caucus Room. As I am seated in the Committee, I am seated facing the audience, which includes the witnesses.

Q. Were they seated together or separately?

A. They were seated in the same section.

Q. Were they next to each other, or were they separated by someone else or chairs?

A. I can't be too sure of this.

Q. And were they both seated when the session came to order at 10:20?

A. Yes, sir.

Q. Then did Mr. Moulder, having brought the session to order, make any statement to the assembly?

A. He did, sir.

Q. And thereafter was a witness called?

A. Yes, sir. The first witness called was Miss Julia [fol. 328] Jacobs.

Q. And she testified?

A. Yes, sir.

Q. Were you present during her testimony?

A. I was, sir.

Q. And then followed Mr. Cover?

A. Mr. Lawrence Cover, yes, sir.

Q. Were you present when he testified?

A. I was, sir.

Q. And then Mr. Gojack testified, is that correct?

A. Yes, sir.

Q. Did you see Mr. Gojack get up and leave the room after he took seat at the calling to order of the assembly that morning?

A. I have no recollection of him leaving.

Q. Were you present when he was called as a witness?

A. I was, sir.

Q. Did he respond to the call?

A. He did, sir.

Q. And testified?

A. He did, sir.

Mr. Hitz: I have no further questions, Your Honor.

[fol. 329] Cross examination.

By Mr. Donner:

Q. Mr. Appell, when was Mr. Gojack first identified to you?

A. As an individual?

Q. Yes.

A. Oh, years before 1955.

Q. Was he identified to you at any time today?

A. No, sir. I recognized Mr. Gojack as I came into the hall.

Q. He wasn't identified to you by Mr. Hitz or anybody else?

A. No, sir.

Q. And if you met Mr. Gojack you would recognize him?

A. Yes, I think I would.

Q. You recall what Julia Jacobs looked like?

A. Well, I can roughly give you a description.

Q. I asked you if you have a recollection of what she looked like.

A. Yes, sir.

Q. What did she look like?

A. Well, she is, I would say, about five foot six and [fol. 330] a half. Maybe seven. She is dark-haired. She was at that time, I do not know, maybe she was 110, or 115 pounds. That is as close as—

Q. Do you recall whether you were in the hearing room during the course of the entire hearing?

A. I was, sir.

Q. You didn't leave at any time?

A. Not to my memory.

Q. You are sure?

A. That is my memory, sir.

Q. You recall seeing me there?

A. Yes, sir.

Q. Now, do you recall Mr. Moulder reading a statement at the beginning of the hearing?

A. Making a statement, yes, sir.

Q. And that was about what time?

A. As my memory has been refreshed, 10:20.

Q. Are you prepared to testify, Mr. Appell, that you remember now that Mr. Gojack was in the room when that statement was read?

A. No, sir. I testified that Mr. Gojack was in the room

when the Committee was called to order. He took a seat and I did not see him leave.

[fol. 331] Q. But you don't remember seeing him present, is that right?

A. I did see him present.

Q. While the statement was read?

A. I am not prepared to say this. I did not see him leave.

Q. I am asking you whether you saw him there while the statement was read.

A. Well, I saw him sit down and I didn't see him leave.

Q. When did you see him sit down?

A. When the Committee was called to order.

Q. Where were you sitting during the course of this hearing?

A. Next to counsel.

Q. Next to counsel?

A. Yes, sir.

Q. You weren't sitting on the dais? You were sitting below the dais?

A. Yes, sir.

Q. Facing out?

A. Facing you, sir.

Q. Facing me. Did you ever leave the room to get a [fol. 332] file?

A. No, sir. The files were brought with me.

Q. You never left the room for any purpose?

A. Not to my knowledge, sir.

Q. Now, after Mr. Moulder read the statement, when was the next time you saw Mr. Gojack?

A. Well, as I say, I don't remember him leaving after he sat down. But the next time that my attention was again drawn to him, when he was called as a witness and was sitting in a chair prepared to testify.

Q. About what time was that?

A. Again, I am going to have to guess, but somewhere I would say 11:30 or somewhere around in that hour. It might have been later. I cannot remember specifically.

Q. You didn't remember whether the hearing was called to order at 10:20, did you?

A. No, I did not, until my memory was refreshed.

Q. Mr. Appell, in 1953, approximately how many witnesses were called before the Committee?

A. In this—

The Court: You mean the entire year?

Mr. Donner: Yes, sir.

A. In this series of hearings, sir?

[fol. 333] By Mr. Donner:

Q. All the hearings that were held in 1953, the investigative hearings.

A. In '53?

Q. Yes.

A. Oh, my Lord, it must have been roughly forty, fifty, sixty.

Q. You remember all of them?

A. No, sir.

Q. In 1954, how many were called before the Committee?

A. I would say, in an approximation, the same number.

Q. Forty, fifty, or sixty?

A. Yes, sir.

Q. You remember all of them?

A. No, sir.

Q. In 1955, how many witnesses were called before the Committee?

A. I would give the same approximation.

Q. About the same number?

A. Yes, sir.

Q. Now what day was it? Do you recall the day when this hearing was called to order?

A. No, I do not, sir.

[fol. 334] Q. You don't know whether it was a Monday, Tuesday, Wednesday or Thursday?

A. I would guess it was a Tuesday, but I am not too certain of that, sir.

Q. Now how many of the witnesses who were called in 1955 do you remember, from your own recollection?

A. I don't recall too many of them, sir.

Q. Now when Mr. Gojack was called up to testify, did he appear from the same seat where you had last observed him sitting?

A. I cannot truthfully recall that, sir. A witness had just been excused. I would probably have walked to the witness that was excused and advised the witness that if he went to the clerk, the clerk would have him sign his voucher and this is probably what I was doing right at the time that Mr. Gojack was called.

Q. I was coming to that, Mr. Appell. Now isn't it a fact that when you are in charge of an investigation, that that is one of your responsibilities, to advise the witness, to make the arrangements with the witness with respect to being paid?

A. We have a clerk there. But it is a courtesy, I do it when a witness leaves the stand, either to him directly [fol. 335] or through his counsel.

Q. And did you walk over to the witness in the course of this hearing, and advise the witnesses, each, as he concluded his testimony, as to the mechanics for claiming his witness fee?

A. I might well have, yes, sir.

Q. Now, when you do that, your eyes are not focused on the audience, are they?

A. No, sir.

Q. Do you know whether or not there was a luncheon recess that day?

A. Oh, I am sure there was.

Q. Do you know whether Mr. Gojack testified before or after the luncheon recess?

A. I think he testified before.

Q. Now I want to show you—this is Government Exhibit 12. This is a record of the hearings. And I want to call your attention to the fact that the hearing was recessed at 1:15. Is that correct?

A. Yes, sir.

Mr. Hitz: Would you give the page number?

Mr. Donner: Yes. Page 43.

By Mr. Donner:

Q. And after the recess, does it refresh your recollection [fol. 336] now to read what happened?

A. Yes. It was in the afternoon.

Q. So are you prepared now to change your testimony?

A. Yes, sir.

The Court: He has said it did refresh his recollection, that it was in the afternoon.

Mr. Donner: Yes.

By Mr. Donner:

Q. Now, what happens during the luncheon recess? Everybody leaves for lunch?

A. Yes, sir.

Q. Now when they come back, are there reserved seats in the caucus room?

A. You know, Mr. Donner, they are not reserved seats.

Q. We both know that?

A. Yes, sir.

Q. So the witness would then choose a random seat, is that right? Whatever was available?

A. Yes, sir.

Mr. Donner: No further questions.

Mr. Hitz: No further questions. Thank you.

[fol. 340] The Court: I now have for determination, after argument, a motion of the defendant for judgment of acquittal made at the conclusion of the Government's case. The motion is in two parts: (1) the new indictment is on

its face not sufficient and (2) the proof of the Government is not sufficient to sustain the charge.

In essence, the claim of the defendant is that the indictment is bad because it fails to recite that the Subcommittee was in terms authorized by the Committee to investigate the specific subject of Communist Party activities within the field of labor. I hold the indictment as drawn to be valid. The investigation was in a field authorized by the House of Representatives to be investigated by the "Committee * * * or any Subcommittee thereof." The indictment recites the legislative authority (Public Law 601, 79th Congress, and H. Res. 5) under which the Committee and [fol. 341] Subcommittee functioned (and the basic purpose thereof); appointment, by the Committee Chairman, of the Subcommittee, with approval of a majority of the Committee; authorization by the Committee for the subpoena of defendant and another to appear at a designated place and time; and particularization of the subject matter of inquiry, which subject matter was within the authorization of H. Res. 5. Further, the indictment charges the deliberate and intentional refusal of the defendant to answer. These are the essential elements required for prosecution under 2 U.S.C. 192, and they conform to judicial mandate. Especially significant is the fact that the House of Representatives, by H. Res. 5, vested the Subcommittee specifically with authority, status and dignity equivalent to that of the whole Committee. Thus the indictment advises the defendant as to the scope of the particular hearings, namely, Communist Party activities within the field of labor; it complies with the exactments of the courts; and it in concise terms clearly advises defendant of, and adequately enables him to know, that with which he is charged, thus enabling him to prepare his defense thereto and providing the opportunity for a record accurately showing the extent to which he may plead former jeopardy.

[fol. 342] Now as to the charge of lack of proof, I hold that at this time the Government's proof is adequate to

sustain the charges set forth in the indictment. The Government has shown that prior to the time the defendant was called to testify, the Subcommittee Chairman had in definite terms specified the field of inquiry. The defendant was present; and further, the record shows that defendant was aware of the subject matter of the hearings—i.e., infiltration of the Communist Party into labor unions, not exposure of defendant—prior thereto and at different times during the hearings. The questions put and deliberately and intentionally not answered were propounded in connection with that specific subject matter and with a legitimate legislative purpose, and therefore were pertinent.

Furthermore, there was no violation of the Committee Rules, but compliance therewith. At the opening of the hearings the Chairman particularized as to the field of inquiry. Thus there was compliance with Rule 2. Rule 1 was likewise complied with, as shown by Government's Exhibits 4, 5 and 7, which likewise disclose that a quorum of the Committee was present when members of the Subcommittee were appointed and subpoenas for defendant and Mates were authorized; also, that a quorum was present [fol. 343] when the hearing date and place were changed.

• • • • •
 Mr. Rein: • • • "Thereupon, Robert Elliott Thompson, was called as a witness by counsel for the defendant and, having been first duly sworn, was examined and testified as follows:

"Direct examination.

"By Mr. Donner:

"Q. What is your full name, please?

"A. Robert Elliott Thompson.

"Q. What is your address?

[fol. 343a] "A. 7305 Keene Mill Road, Springfield, Virginia.

"Q. What is your occupation, Mr. Thompson?

"A. I am a reporter for International News Service.

"Q. Do you work for any other press service aside from International News Service?

"A. No, I don't.

"Q. Do you work for any individual papers?

"A. No, I don't.

"Q. Did you, in your official capacity, ever attend a meeting in the office of Chairman Walter of the House Un-American Activities Committee?

"A. Not in the office of Chairman Walter.

"Q. Did you attend a meeting in the House Un-American Activities office?

"A. Yes.

"Q. When was that meeting, approximately?

"A. February 14, 1955.

"Q. How did you come to attend that meeting?

"A. As I recall, there were either one or two other reporters than myself who normally covered the committee, knew that this case was coming up, and we—

"Q. What case?

[fol. 344] "A. The IUE case, the investigation of the leadership of the union.

"Q. Including Mr. Gojack?

"A. Well, I don't recall whether we knew Mr. Gojack's name at the time. I don't believe so, because I knew of Mr. Gojack, having worked in Fort Wayne some time ago, and I don't think that at the time of the meeting I knew that Mr. Gojack was going to be a witness. I can't recall that I did.

"Q. But you knew that there was an investigation pending of certain UE officials; is that right?

"A. That is correct.

"Q. Now proceed. How did you come to attend the meeting?

"A. We met Mr. Walter that morning as he was going into the meeting, and we asked him if we could cover the

meeting, if it would be open. As I recall, he said certainly, he would like to have the meeting open to the press, and so we went into the small office, small committee room, and Mr. Goldstein, I believe, was in there.

"Q. Who was Mr. Goldstein?

"A. He was the Washington representative for the [fol. 345] union."

Turning to page 72.

"Q. Now, Mr. Thompson, do you recall what took place at that hearing on February 14?

"A. Only from refreshing my memory by reading—

"Mr. Donner: May I show this to the witness to refresh his recollection?

"The Court: Could you recall without refreshing your recollection, Mr. Witness?

"The Witness: No, sir, I couldn't.

"The Court: You may refresh your recollection, and after refreshing it, then the attorney will ask you certain questions.

"(Paper handed to witness.)

"By Mr. Donner:

"Q. Now can you tell us what did Chairman Walter say, if anything, at this hearing?

"Q. Will you now tell us, please.

"A. Well, as well as I can recollect beyond the story, even, Mr. Goldstein was there, and when Mr. Goldstein saw that the press was present, and I don't recall whether there were [fol. 346] two or three reporters, he objected, and he also objected to the stenotypist, and Mr. Walter said he would not hear anything Mr. Goldstein had to say unless it was on the record, because he had received this telegram from Mr. Gojack, in which he said Mr. Gojack had accused him of trying to bust the union. I don't remember, of course,

exactly what the words were. There were some rather hot words between Mr. Goldstein and Mr. Walter and Mr. Moulder, another member of the committee, and as I recall, Mr. Goldstein repeated Mr. Gojack's, or what Mr. Gojack supposedly said in the telegram—I don't believe I ever saw the telegram—that Mr. Walter was out to bust the union. Mr. Walter said, as I recall, that he certainly was out to bust this union. He said that he and other members of the committee had very good records on labor legislation supporting unions, but that they were out to get this union, because he said it was Communist-dominated and, as I recall, it was in a defense plant or a plant that had defense work.

"Q. Now, do you recall whether Mr. Moulder said anything at this meeting?

"A. Yes, sir. Mr. Moulder's statements were somewhat [fol. 347] along the same line."

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Mr. Hitz: I would like to read the cross, please, on page 75.

"Cross-Examination.

"By Mr. Hitz:

"Q. Mr. Thompson, now I am going to read the record of the session about which you have given testimony. I would like for you to pay close attention to it, because when I am through I am going to ask you the question whether it is an accurate statement of the way you recollect the session proceeding.

"First of all, were the members of the committee present Mr. Walter and Mr. Moulder and Mr. Doyle?

"A. I don't recall Mr. Doyle was there, but then he could have been and I just wouldn't remember. That's all.

"Q. I see. Was Mr. Beale, the chief clerk of the committee, present?

"A. Yes, sir. It was in his office, as I recall it.

"Q. Yes.

[fol. 348] "I am going to ask you, when I finish reading, whether this occurred:

"Chairman Walter. The committee will be in order.

"Statement of George Goldstein, Washington Representative of United Electrical, Radio and Machine Workers of America (UE), 930 F St., N.W., Washington, D. C.

"Chairman Walter. Will you raise your right hand and be sworn.

"Mr. Goldstein. No, I just wanted to see you.

"Chairman Walter. You told my secretary that you wanted to apply to have a hearing postponed because of an election in some way.

"Mr. Goldstein. I wanted to talk to you about that situation.

"Mr. Walter. I have no authority to do it, because this committee met and fixed the time and place of hearings. We are in the process of cleaning up old business, and among the things that we had unfinished was this man who did not come because of a doctor's certificate which he produced. Now you want to have that hearing continued? It is a [fol. 349] serious piece of business, because we have made arrangements to hold it.'

"Now, Mr. Thompson, I am interrupting the continued reading of this hearing to ask you a question of my own. The question is: Was not the person who had been summoned to appear as a witness, and who didn't appear because of a doctor's certificate which was given to the committee, was he not Mr. Mates and not Mr. Gojack, anyway?

"A. Yes, sir, it was David Mates.

"Q. I will now continue to read without omission:

"Mr. Goldstein. Is there any reason for this? I object to this record being kept.'

"And I would like to interrupt my reading to ask you this question of my own, Mr. Thompson: Did Mr. Goldstein refer then to the stenographer present, taking down what was being said by both sides?

"A. Yes, sir.

"Q. I will now continue to read without omission:

"Chairman Walter. I do not know what there is to object to.

[fol. 350] "Mr. Goldstein. I do not see why it is necessary.

"Mr. Doyle. We keep a record of our proceedings, which is proper. It is public business.

"Mr. Goldstein. Let me say this. This is why I wanted to see you. I wanted to find out whether you and the committee were aware of the fact that this election was scheduled for the 24th.

"Chairman Walter. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.

"Mr. Goldstein. Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of that election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the [fol. 351] coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.

"Chairman Walter. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.'

"I am going to interrupt my continued reading of this for the moment to ask you, Mr. Thompson, a question of my own.

"Is that statement—I am going to read it again: 'but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.' Is that what Mr. Walter said, or is that inaccurate?"

"A. That is what Mr. Walter said.

"Q. I will now continue to read without omission:

"'Mr. Moulder. May I ask a question. I am a little in the dark insofar as this gentleman is concerned, and I do [fol. 352] not even know his name or what he represents.

"'Chairman Walter. Let us get the record straight. What is your name?"

"'Mr. Goldstein. My name is—for the record, I want to make it clear that I had no conception that this was going to be in the form of a hearing, or with a record taken. I asked for the very simple thing that a person of my sort does around the Hill, to talk to a Congressman for a few minutes about a matter. I had no intentions—

"'Chairman Walter. Except that you told the people in my office—

"'Mr. Goldstein. What I wanted to see you about.

"'Chairman Walter. That is right, and so now we are going to take it up with the committee.

"'Mr. Moulder. Your name is George Goldstein, and you are the Washington representative, and you are not an attorney.

"'Mr. Goldstein. No, I am not an attorney.

"'Chairman Walter. If you are going to make representations concerning a postponement, then you are going to [fol. 353] do it under oath. If you are not going to do it under oath, and if you are not willing to tell us what is wrong with this man or why the hearing should not continue to go on, then we are just not going to hear it.

"'Mr. Goldstein. Let me just say this. I do not want to go under oath for the simple reason because I am not prepared, and I don't think this is a matter that requires a hearing. I am simply asking you to postpone the hearing.

"Chairman Walter. How do you know there is going to be an election?

"Mr. Goldstein. I do not know."

"I am going to interrupt the continued reading to ask you a question of my own, Mr. Thompson.

"At that juncture and after what had transpired, didn't Mr. Goldstein say he didn't even know whether there was going to be an election or not, as I have read?

"A. Well, from what you read; but I don't recall that that was said.

"Q. Do you dispute it?

"A. No, I don't dispute it. I just don't recall.

[fol. 354] "Q. Now I will continue to read without omission:

"Mr. Goldstein. I do not know. You can ask the National Labor Relations Board. They have scheduled an election.

"Chairman Walter. Why are you not willing to swear to these facts? and then we will know whether or not there is going to be an election and when it is going to be held and all about it.

"Mr. Goldstein. If that is your attitude, I will just leave. I don't see any point in pointing it out. I simply wanted to place before you our request, and we welcome your committee there.

"Chairman Walter. I did not know whether there is an election.

"Mr. Goldstein. Would you like to have me ask the National Labor Relations Board?

"Chairman Walter. I would like to ask you some questions about it.

"Mr. Goldstein. I just don't want to go under oath. I don't see the point in having a hearing.

"Mr. Doyle. I am glad that the gentleman says that [fol. 355] they welcome our committee there.

"Mr. Goldstein. I say this, and I will repeat it. This is the thing I wanted to say. I can say in one sentence what I wanted to say to you, Congressman.

"Chairman Walter. You are not going to say anything unless it is under oath. I want to have a record, because I have a telegram that indicates to me that your crowd would stop at nothing. I want whatever you have to say to be under oath. If you are not going to do that, then you are excused.

"Mr. Goldstein. O.K., I am sorry. Thank you.

"Chairman Walter. All right.

"(Whereupon, the committee adjourned at 11:15 o'clock.)"

"Do you dispute anything that was read to you in this record?

"A. No, sir.

"Mr. Hitz: That is all, Your Honor.

"The Court: Any redirect?

"Mr. Donner: No, Your Honor."

[fol. 356] Mr. Rein: At that point, Your Honor, the court took over the examination of the witness. If I may, I would like to read that, because it led to further recross and redirect.

The Court: Very well.

Mr. Rein: Turning to page 80:

"The Court: Then, Mr. Witness, it was that testimony which you heard read to you which was the basis for your testimony today that Mr. Walter said that he was out to bust the union?

"The Witness: Sir, I remember—

"The Court: Is that correct?

"The Witness: As I recall, there must have been something more than that, either before or after the record was begun, because I do recall the word "bust" being used by either Mr. Moulder or Mr. Walter. As I recall, Mr. Moulder said more than I heard in the record.

"The Court: Then you contend that part of the proceedings were not taken down?

"The Witness: Well, it may have been a conversation after Mr. Walter adjourned the session.

"The Court: I want your recollection on that, if you [fol. 357] have any.

"The Witness: It is just vague, it's been so long, and I never dreamed it would come back up again.

"The Court: All right.

"Mr. Hitz: Now I do have some recross, if I may."

Mr. Hitz: (Reading)

"By Mr. Hitz:

"Q. Mr. Thompson, you say that either Mr. Walter or Mr. Moulder, to your recollection, did use the expression, "union-busting"?

"A. As I recall, yes, sir.

"Q. This record that I have read to you used it, too, did it not, attributing it to Mr. Walter?

"A. Yes, sir. Not the word "bust," I don't believe, in reference to himself, did it?

"Q. No, it did not.

"A. No.

"Q. I will read the passage in which Mr. Walter used the expression 'union-busting.' He was quoting from a telegram that Mr. Gojack had sent to Walter, accusing Walter of having that purpose; isn't that right?

"A. Yes, sir, that is right.

[fol. 358] "Q. And this is what happened, did it not:

"'Chairman Walter.'

"On page 3.

"'I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe that it is good for the United States.'

Isn't that what Mr. Walter said?

"A. That was what Mr. Walter said, yes, sir.

"Q. And is he the one and not Mr. Moulder—

"The Court: You didn't let him answer.

"Mr. Hitz: He did. He said, 'Yes, sir.'

"The Witness: I said, 'Yes, sir, that is what Mr. Walter—"

"The Court: I didn't hear him. What did he say?

"The Witness: That is what Mr. Walter said.

"The Court: All right.

"By Mr. Hitz:

"Q. Now, is that the passage that you attempted to summarize in your article in the way that you did?

"A. Yes, sir, except that as I say, Mr. Moulder somewhere said something similar to that. Whether it was after or before, I don't know. It must have been after. It couldn't have been before.

"Q. Something similar to what Mr. Walter said?

"A. That is right.

"Q. And after what I have read Mr. Walter said?

"A. Yes, sir.

"Q. And yet a few moments ago, I asked you if you had not testified that either Mr. Walter or Mr. Moulder said it, and you said yes, one or the other. Now you are saying both?

"A. Yes, sir, I—

"Q. Which is correct? one or the other said it, or both said it?

"A. No, they both said it.

"Q. So do you want to change your earlier testimony, that they both said it—

• • • • •

"Q. You now wish to change your testimony and say that they both said it, instead of that one or the other said it?

• • • • •

[fol. 360] "A. I don't recall that I said that Mr. Walter alone said it, sir. I agreed that Mr. Walter said this, but—

"The Court: Said what?

"The Witness: Made this statement which Mr. Hitz just read.

"The Court: I see.

"A. (Continuing) —but I don't believe that I ever testified that Mr. Moulder had not also made a similar statement.

"By Mr. Hitz:

"Q. Well, it was my understanding that twice you said, I think once to Judge Pine and once to me, that either Mr. Walter or Mr. Moulder said something about union-busting. Did you not?

"A. Yes, sir.

"Q. And now you say that Mr. Walter said this, but Mr. Moulder said something like it as well?

"A. Yes, sir.

"Q. So they both said it?

"A. Yes, sir.

"Q. The same thing?

"A. Well, or similar.

[fol. 361] "Q. To the same effect?

"A. Yes, sir."

• • • • •

Mr. Rein: (Reading)

"Redirect examination.

"By Mr. Donner:

"Q. Mr. Thompson, were you aware when the transcription of the hearing started and when it ended?

"A. No, I was not.

"Q. Did you converse with the people in the meeting? Did you talk to them privately?

"A. To—?

"Q. Did you talk to Congressman Moulder at any time?

"A. Well, I don't recall. We talked to Mr. Walter before the meeting, and I suppose we talked to him briefly after the meeting."

I would like to state that the counsel of parties agree at this trial that at the conclusion of the portion of Mr. Thompson's testimony which has just been read that Mr. Thompson was then asked a question and he answered and the gist of which is as follows: that in the story which he wrote for the newspaper, with respect to this incident, he [fol. 362] referred to statements made both by Congressman Moulder and Congressman Walter. This story, it is further stipulated, is the newspaper account which appears as a clipping from the Fort Wayne Journal Gazette headed "House Un-American Committee Wants UE 'Out of business'." That newspaper account appears at 202 of the Supreme Court record.

Mr. Hitz: We join in that stipulation.

• • • • •
[fol. 363] Mr. Hitz: Frank S. Tavenner. (Reading)

"Direct examination.

"By Mr. Hitz:

"Q. Mr. Tavenner, you were in the room while the reporter from INS just testified, Mr. Thompson, in which he gave his recollection of what took place at a session of the committee on February 14, 1955, and you heard what he said. You were not present at that session?

"A. No, sir.

"Q. So of course you will not be asked for any comment on that. However, having in mind that whatever took place took place on February 14th, can you relate that happening, in point of time, to the continuity of the subpoenas and other matters that had to do with getting Mr. Gojack to the hearing at which he testified?

"Let me ask you, first of all: Prior to issuance of a subpoena, of the first subpoena for Mr. Gojack, had any word

been given out by the committee that an investigation was projected in Fort Wayne of the UE union?

"A. Yes, there had been a public announcement that hearings would be held at Fort Wayne, Indiana.

[fol. 364] "Q. Can you tell us approximately when that public announcement was made?

"A. By having refreshed my recollection as to a telegram which was received by the committee, I can.

"Q. And is your recollection refreshed from that?

"A. Yes.

"Q. Approximately when was the public announcement?

"A. February 9th.

"Q. February 9th?

"A. 1955.

"Q. Yes, sir. That was prior to Mr. Gojack having been subpoenaed?

"A. Yes, sir."

.

[fol. 365]

After Recess

Mr. Hitz: I would like to resume the reading without omission of testimony.

"Q. Would you look at [the telegram] and tell me whether or not that is the telegram that you said refreshed your recollection?

"A. It is.

"Q. Thank you, sir."

.

"Q. Mr. Tavenner, is [the telegram] from the files of this particular investigation at the committee?

"A. I'm sorry, would you repeat the question?

"Q. Is this part of the file of the committee?

"A. It is.

"Mr. Hitz: May I read it to the Court and the record, Your Honor?

"The Court: All right.

"Mr. Hitz: This is, as Your Honor can see, on a piece of paper that has 'Western Union' at the top in the typical

form of a Western Union telegram, 'Fort Wayne, Ind., 1050 AM.' Stamped above that is 'FEB 10 1150 AM.'

'REPRESENTATIVE FRANCIS WALTERS
[fol. 366] **'HOUSE OFFICE BLDG WASH DC**

'REPRESENTATIVE WALTERS' ANNOUNCEMENT YESTERDAY OF AN UN-AMERICAN ACTIVITIES COMMITTEE HEARING IN FORT WAYNE JUST PRIOR TO A NATIONAL LABOR RELATIONS BOARD ELECTION AT THE MAGNAVOX PLANT ON FEBRUARY 24TH IS A FLAGRANT USE OF A CONGRESSIONAL COMMITTEE FOR UNION-BUSTING.

'UE LOCAL 910 HAS HAD CONTRACTUAL RELATIONS WITH THE MAGNAVOX COMPANY FOR 17 YEARS WITH A RECORD OF GAINS AND ACCOMPLISHMENTS FOR THE WORKERS SECOND TO NONE IN THE ELECTRONIC INDUSTRY. THE MAGNAVOX COMPANY, AIDED BY TWO RAIDING UNIONS, IS SEEKING TO OUST UE SO THAT SENIORITY RIGHTS, HIGHER WAGES, AND OTHER CONTRACTUAL GAINS UNDER UE CAN BE ABOLISHED. WITH FORMER UN-AMERICAN CHAIRMAN THOMAS SERVING A PRISON SENTENCE FOR BRIBERY, WE HAVE EVERY RIGHT TO ASK WHETHER THE MAGNAVOX COMPANY IS PAYING FOR THIS CONGRESSIONAL ASSISTANCE IN UNION-BUSTING. ON MONDAY OF THIS WEEK, THREE DAYS BEFORE REPRESENTATIVE WALTERS ANNOUNCEMENT, THE MAGNAVOX INDUSTRIAL RELATIONS DIRECTOR, ONE GEORGE MCCLAREN, ANNOUNCED TO EMPLOYEES THAT THE UNDERSIGNED WOULD BE SUBPOENAED BY WALTERS. IN VIEW OF MATUSOW'S CONFESSIONS, [fol. 367] WE ALSO HAVE THE RIGHT TO KNOW WHICH TYPE MATUSOW WITNESS REPRESENTATIVE WALTERS AND THE MAGNAVOX COMPANY WOULD USE.

'LAST YEAR, UN-AMERICAN ACTIVITIES COMMITTEE MEMBER CLARDY WAS DEFEATED BY THE PEOPLE OF MICHIGAN BECAUSE OF HIS USE OF THIS COMMITTEE AGAINST THE UNITED AUTOMOBILE WORKERS AND IN BEHALF OF THE AUTO CORPORATIONS. ONLY LAST TUESDAY, REPRESENTATIVE WALTERS' OWN CONSTITUENTS REPUDIATED HIS USE OF THE UN-AMERICAN ACTIVITIES COMMITTEE IN A WITCH-HUNT CAMPAIGN IN BEHALF OF THE INGERSOLL-RAND COMPANY OF PHILLIPSBURG, NEW JERSEY. THE WORKERS IN THAT SHOP ON TUESDAY VOTED FOR UAW BY A VOTE OF 1,451 AGAINST 508 FOR THE IAM-AFL AND 204 FOR THE USA-CIO, IN SPITE OF WALTERS' INTERFERENCE IN THAT SHOP AND HIS LYING CLAIM THAT A 1950 STRIKE THERE WAS 'COMMUNIST-INSPIRED.' SINCE CONGRESSMAN DIES, THIS COMMITTEE HAS BEEN USED TO AID EMPLOYERS IN ATTACKS UPON CIO, AFL AND INDEPENDENT UNIONS. AS THE LATE CARDINAL MUNDELEIN DESCRIBED IT 'IF IT IS REALLY A COMMITTEE TO INVESTIGATE "UN-AMERICAN ACTIVITIES" IT REALLY SHOULD BEGIN WITH [fol. 368] ITSELF.' MORE RECENTLY, THE DETROIT FREE PRESS, A PRO-MANAGEMENT PAPER ITSELF, DECLARED EDITORIALY, 'THE MOST UN-AMERICAN ACTIVITY IN THE U.S. IS THE CONDUCT OF THE CONGRESSIONAL COMMITTEE ON UN-AMERICAN ACTIVITIES. IT IS SO VICIOUSLY FLAGRANT A VIOLATION OF EVERY ELEMENT OF COMMON DECENCY ASSOCIATED WITH HUMAN LIBERTY THAT IT IS A FOUL MOCKERY ON ALL THAT JEFFERSON AND LINCOLN MADE ARTICULATE IN THEIR DREAMS OF A CLEANER, FINER ORDER ON EARTH. THE HYPOCRITICALLY NAMED COMMITTEE ON UN-AMERICAN ACTIVITIES SHOULD BE ABOLISHED AT THE EARLIEST POSSIBLE MOMENT BY THE U.S. CONGRESS AND SO

DEEPLY BURIED THAT NO OTHER GROUP OF PUBLICITY-MAD ZEALOTS COULD EVER BE ALLOWED TO TARNISH WITH THEIR STENCH THE GREATEST INSTITUTION OF OUR DEMOCRACY, OUR HALLS OF LEGISLATION.'

'SHOULD THE HOUSE OF REPRESENTATIVES PERMIT WALTERS TO SO BRAZENLY AND OPENLY AID THE MAGNAVOX COMPANY IN UNION-BUSTING, THE HOUSE ITSELF WILL PROVE THE DETROIT FREE PRESS ABSOLUTELY RIGHT IN THE ABOVE-QUOTED EDITORIAL.

'WE RESPECTFULLY REQUEST YOUR INVESTIGATION OF REPRESENTATIVE WALTERS' LATEST ACTION AND HIS OBVIOUS TIE-UP WITH THE MAGNAVOX COMPANY.

'JOHN T GOJACK UE DISTRICT
NINE PRESIDENT
'1835 SOUTH CALHOUN ST FORT
WAYNE INDIANA'

"By Mr. Hitz:

"Q. Now, Mr. Tavenner, that little telegram was received the day after the public announcement of the investigation; is that correct, sir?

"A. Yes, sir.

"Q. To that time, had there been any public announcement that it was Mr. Gojack, among others, that would be called to that hearing?

"A. No, sir, not that I know of.

"Q. And then came the session of February 14th, at which Mr. Goldstein, the local representative of UE, appeared in the office of the committee; is that right, sir? and then took place the session we have discussed?

"A. Yes, sir.

"Q. And then, I believe your testimony was that the 15th of February a subpoena was issued for Mr. Gojack to

appear in Fort Wayne at a hearing on February 21st. Will you check that?

[fol. 370] "A. I may have so testified, but I believe, I know that if I did, I made an error as to the date.

"Q. All right, sir.

"A. (Continuing) —of the issuance of the subpoena.

"Q. I see.

"A. The subpoena was issued on the 10th day of February and was served on the 15th day of February.

"Q. I see. So that the same day that this telegram was written and sent by Mr. Gojack and received by the committee, the committee issued a subpoena?

"A. Yes.

"Q. Would you know whether the subpoena was issued before or after the receipt by the committee of the subpoena?

"A. No, I would have no way of knowing.

"Q. And then the hearing in Fort Wayne was to have been February 21st; correct, sir?

"A. Yes.

"Q. And it was served on the 15th; and I think you have testified that you received a communication from Mr. Scribner, the attorney for Mr. Gojack, by wire, requesting a [fol. 371] postponement of the hearing for Mr. Gojack to any time other than that week, any time later than that week; is that right, sir?

"A. That is correct.

"Q. For personal reasons and because of the Magnavox hearing?

"A. Yes, sir.

"Q. And that request for a continuance of his appearance was at first denied by wire of Mr. Beale, the committee clerk, was it, sir?

"A. Yes, sir.

"Q. Then, subsequently, Mr. Scribner called you on the phone?

"A. That is correct.

"Q. And was it then that you talked to Mr. Walter personally and obtained a postponement?

"A. It was then that I made some personal inquiry of my own regarding the election that was to be held, and then went to the floor of the House of Representatives, called Mr. Walters out and explained the information that I had; and it was at that time that he agreed that the hearing not be held. The investigator who was then out in the [fol. 372] field serving subpoenas was advised not to continue with the service of subpoenas until further advised.

"Q. I see. Were you familiar with the fact that the committee was going to subpoena Mr. Gojack before he was subpoenaed the first time?

"A. I knew from the time of our hearings in Detroit that Mr. Gojack would be called as a witness at a convenient time.

"Q. When the subpoena was issued, the first one was issued for Mr. Gojack. Did you know that there was going to be any kind of a Labor Relations election held that would interest the UE?

"A. No, sir, I did not.

"Q. So far as you know, did the committee know it?

"A. No, sir.

"Q. What is the first that you as committee counsel knew that there was an election to be held whenever it was to be held at Magnavox, involving UE?

"A. Several days after the receipt of the telegram, I saw it, and that was the first knowledge that I had that there was a claim that such an election would be held.

"Q. You mean when you first saw the telegram, that was [fol. 373] the first notice that you knew of?

"A. Yes.

"Q. And you didn't see it until after it was received, by a couple of days?

"A. That is right.

"Q. I understand.

"And then, when you verified the fact that there was indeed going to be such an election, you obtained the continuance from Mr. Walter?

"A. Yes, sir.

"Q. That was February 17th, was it? You can refresh yourself if you need to, I think.

"A. (Inspecting papers) Yes, sir, February 17th.

"Q. How did you transmit that information to Mr. Scribner, who had asked for it?

"A. By telegram.

"Q. And then I think you said that also on the 17th, the same day, Mr. Scribner wrote you thanking you for the postponement; is that right?

.

"A. (Continuing) It was by telephone message instead of by telegram that I advised Mr. Scribner."

With the Court's permission, I would like to read a statement of Mr. Tavenner later made at the earlier trial [fol. 374] while he was on the stand, which he desired to make by way of a correction of some of the testimony just given. With the Court's permission, I should like to read that from page 136 of the Supreme Court record.

The Court: I understand there is no objection.

Mr. Hitz: (Reading)

"The Witness: [Mr. Tavenner] If the Court please, I would like to correct an error in my testimony,—

"The Court: Very well.

"The Witness: —if I may be permitted to so so now.

"The Court: Yes.

"The Witness: I was asked the question this afternoon as to whether a committee release or information had been given by the committee prior to February 10th, that Mr. Gojack would be heard in the hearing which had been set for Fort Wayne.

"I had a search made of the local newspapers prior to my appearance on the witness stand, and we had not found any instance, an instance in which that information had been made public. Therefore, I testified that it had not been done as far as I knew.

"In checking again with my office during the afternoon [fol. 375] recess, I find that a clipping has been found from

a newspaper apparently printed in Fort Wayne, indicating that on the 9th day of February, the chairman of our committee announced that the committee at a committee session had decided to conduct hearing at Fort Wayne and at Spokane, Washington. In the course of the article, it was stated that a committee source indicated that Mr. Mates and Mr. Gojack would be heard at the Fort Wayne hearings.

"The Court: Very well.

"Mr. Hitz: Thank you, sir.

"Mr. Donner: That was February 9th?

"The Witness: February 9th."

• • • • •

Mr. Rein: If the Court please, I would like now to direct the Court's attention to Government's Exhibits No. 5 and No. 7, which contain excerpts from the Minutes of an executive meeting of the Committee on Un-American Activities. [fol. 376] Exhibit No. 5 contains an excerpt from the Minutes of an executive meeting of the Committee held on February 9. Exhibit 7 contains an excerpt of an executive meeting of the Committee on Un-American Activities held February 23.

I would like to request, and I do now request the Court to direct Mr. Hitz or the Government to produce the entire executive committee meetings of those dates, at which excerpts have been introduced in evidence, so that we may see the context in which these excerpts appears, and be able to evaluate them for the purposes of this case. I submit that as they appear here, because they are not in context, we do not have a full picture. I think, particularly in view of the argument, I do not think the Court can pass upon the full picture here as to what was actually done at these hearings, with regard to authorizing, delegating authority to the Sub-Committee.

The Court: You have anything to say to that, Mr. Hitz?

Mr. Hitz: Yes. I wonder if Mr. Rein would be a little more specific as to what he means by minutes? I am not, myself, informed as to how this meeting was recorded or

summarized or whatever. But if he is requesting the full [fol. 377] minutes, and this appears to be an extract, I would like to know that, if he wants all of the minutes that were recording the action of the committee meeting on whatever subject? merely because they occurred at the same meeting, I would like to know that. And then if he is referring to any recordations of the actual proceedings, such as a stenographer's transcript, I would like to know that.

Mr. Rein: I don't really know how I can answer Mr. Hitz' question. He produced excerpts from the committee. I don't know how they keep their minutes.

The Court: I don't either, Mr. Rein. But I would think there is one point that you and I can understand. I would certainly assume that you are not interested in anything which might pertain to Keach.

Mr. Rein: Oh, no, of course not.

The Court: Secondly, as I understand, are you asking for the transcript which constituted the basis of the stenographer's notes, which constituted the basis for any minutes so recorded?

Mr. Rein: If there are such, yes. I don't know whether there are such. I think we should have what was actually said, if they keep minutes in that fashion, yes.

The Court: I don't think I make myself clear to you. [fol. 378] Sometimes there may be a challenge of the minutes, as to their accuracy, and then they go back to the stenographic or stenotype notes, to see if they be in conformity therewith.

Mr. Rein: You mean the tapes?

The Court: Yes.

Mr. Rein: No.

The Court: In other words, if I understand you, you are asking for the minutes as written by the committee with reference to this particular subject?

Mr. Rein: That is correct.

Mr. Hitz: I think that clears it up. It is my present understanding, merely so that we may progress at this time,

and I will check this with the committee, that this is a copy of everything that is disclosed in the minutes with reference to the subject.

And it is also my understanding, which I will check, that the reason why the word "excerpt" is used, is that there may be other minutes recorded on other subjects, and this does not purport to be the minutes of the entire session.

If that is helpful, and we can get on to something else, I can check to find out. And if this is not a statement of the full minutes, on this subject, I think you are entitled [fol. 379] to it. In fact, that is what I endeavored to get.

The Court: You are finally in accord.

Mr. Rein: Yes. I would like to make this clear: that Mr. Hitz will either produce minutes or he will make a statement that this is all that there is.

And, while we are at that, may we also ask him whether there are any other minutes of executive committee meetings, at any other time other than at these dates which relate to these particular subjects, as to subpoenaing these witnesses.

Mr. Hitz: I understand the question. I think Mr. Rein is entitled to this. I also can add that I have already attempted to accomplish this, and, in suggesting the draft of the indictment to the grand jury and preparing my evidence for trial, I obtained everything on the subject that was made available to me or anyone could find that is contained in these minutes. But I will make a further check so that it is up-to-date. But, so that we may progress here, I know his request.

The Court: And add to it, in compliance with what Mr. Rein says, so the record will be complete, when you have done it, as you very courteously and properly suggest, and [fol. 380] you find nothing, you will so recite for the benefit of Mr. Rein and the record.

Mr. Hitz: Oh, yes. And I will also state for his benefit from whom I get my information.

The Court: I am sure it is perfectly clear to you, Mr. Hitz, but that relates to both 5 and 7.

Mr. Donner: Or for any other entry that may be present.

The Court: That is right.

Mr. Hitz: I understand. Yes, sir.

Mr. Rein: I would like now to direct the Court's and counsel's attention to page 156 of the Supreme Court record and the testimony of George David McClaren.

(Reading.)

"Thereupon GEORGE DAVID McCLAREN was called as a witness by counsel for the defendant and, having been first duly sworn, was examined and testified as follows:

"Direct examination.

By Mr. Donner:

"Q. What is your full name, please?

"A. George David McClaren.

"Mr. Hitz: I didn't get the middle name or initial.

[fol. 381] "Mr. Donner: David.

"By Mr. Donner:

"Q. What is your address, sir?

"A. Rural Route 1, Grabill, Indiana.

"Q. What is your occupation?

"A. I am director of industrial relations for the Magnavox Company.

"Q. How long have you had that position?

"A. About five and a half years.

"Q. Do you know whether the United Electrical, Radio and Machine Workers has ever been a bargaining agent at the Magnavox Company?

"A. Yes, it has been.

"Q. Do you know for how long it was a bargaining agent?

"A. I think about seventeen years.

"Q. Did there come a time when it ceased to be the bargaining agent in the plant?

"A. Yes.

"Q. Can you tell me when that was?

"A. February or March of last year.

"Q. Of 1955?

"A. Right.

[fol. 382] "Q. An election was held at that time?

"A. That is correct.

"Q. And a rival union superseded the United Electrical, Radio and Machine Workers?

"A. That is right.

"Q. Do you recall when that election was held?

"A. I think it was either in February or March of last year.

"Q. Do you know whether there was a run-off election held in connection with that election?

"A. There was.

"Q. That is, the first election was inconclusive?

"A. That is right.

"Q. And a second election was held.

"A. That is right.

"Q. And in that election the bargaining agent, the agent that had been up to that time the bargaining agent was defeated in a run-off election?

"A. That is right.

"Q. That run-off election took place sometime in March, did it not?

"A. I believe that is correct.

"Q. Do you know the defendant John T. Gojack?

"A. Yes.

[fol. 383] "Q. Have you ever participated in a negotiations with him?

"A. Yes.

"Q. He is an official, an officer of the District 9 of the United Electrical Workers; isn't that right?

"A. That is right.

"Q. Did you ever have occasion to circulate in the plant material obtained from the files of the House Un-American Activities Committee, dealing with Mr. Gojack?

"A. Such information was circulated to department heads and factory supervision."

I have asked the clerk to mark, and he has marked, Defendant's Exhibit No. 3-A, and I would like, with the Court and counsel's permission, in my questioning, where I refer to Exhibit 5-A in questioning, to use 3-A instead.

I would like to indicate the reason for it is, we have already introduced, and it has been received in evidence, Defendant's Exhibit No. 3. And 3-A is just simply a memorandum from the witness here in which he circulated what has been introduced as Exhibit 3.

(Covering letter of 10/6/53 was marked Defendant's Exhibit No. 3-A for identification.)

[fol. 384] (Reading)

"Q. I show you a document that has been marked Defendant's Exhibit No. [3-A] and ask you what that is.

"A. This is a copy of a circular sent from my office to all of the department heads and foremen.

"Q. What is the circular to which it is attached?

"A. The circular to which it is attached is a report, a copy of a report from the files of the Committee on Un-American Activities.

"Q. Mr. McClaren, how did you obtain that copy?"

I may state for the record at this time that the report testified to by the witness McClaren as being a copy of a report from the files of the Committee on Un-American Activities, is and has been received in evidence as Defendant's Exhibit 3 in this trial.

Mr. Hitz: That is correct.

Mr. Rein: Continuing then.

"A. Through the Congressman from our district.

"Q. What is his name?

"A. Ross Adair.

"Q. Did you ask Congressman Adair to get this for you?

"A. My assistant, on my instructions, asked Congressman Adair to get it.

[fol. 385] "Q. And you had the information which you received duplicated; is that correct?

"A. That is correct.

"Q. Verbatim?

"A. That is right."

At this point, rather than reading from the record, in which, as Your Honor will note, Exhibit 5-A was offered in evidence, objected to, the objection was sustained, I think I would like now, in this trial, to offer Exhibit 3-A in evidence. Exhibit 3 has already been received. I would like to hand them up to Your Honor.

Mr. Hitz: Would Your Honor excuse me to give me an opportunity to take a position?

The Court: Certainly.

Mr. Donner: Your Honor, this simply corroborates the oral testimony in the record, about the circulation of this document. In the earlier trial, the documents themselves were not admitted into evidence, and they are here now.

Mr. Hitz: Your Honor, I, at this time, will object to these two documents, both the 3 and the 3-A.

Mr. Rein: Exhibit 3 has already been received in evidence.

Mr. Hitz: I know. Despite the fact that one of them [fol. 386] has already been offered in evidence. As to that one, I would like to make this motion, that it be stricken from the evidence, with this objection with regard to 3. And my objection now to 3-A, and my present motion to strike 3, I can give the same reasons why I do object for each one. And my objection is that they are irrelevant and immaterial, because of the dates involved, primarily. When No. 3 was admitted in evidence, no purpose for it was stated and I was under the impression that it had something to do with legislative purpose; and it was indeed offered in what I believe to be that stage of the defense's contentions in this case. I do not believe that they have any relevancy or materiality, however, as coming from and through the testimony of Mr. McClaren.

So that unless Mr. Rein can indicate some relevancy and materiality other than that which he appears to have been pressing from Mr. McClaren, with reference to the docu-

ment already in, I think my motion should be considered with my objection to the reception of the other document, and that they both should end up not being received in evidence.

Mr. Donner: Your Honor, you will recall that we offered these documents and we did give grounds, and Your Honor commented on it. We pointed out, these are documents [fol. 387] drawn from the files of the Committee dealing with the background of this defendant. And we urged, successfully, I thought, that these are relevant to our claim that this was a hearing called for the purpose of exposure. We also made the point that the need for further evidence about Mr. Gojack was minimal, in view of the fact that this material was already in the file. And I recall Your Honor saying that it would go to the weight but, as I recall it, there was no objection, at that point, to the materiality and relevancy.

I think, also, that there should be some strong reason as to why they should be excluded from evidence now after they have been admitted.

The Court: After it has been admitted.

Mr. Donner: After "it" has been admitted. We are not talking about the other one.

As to 3-A, this witness has testified in the earlier trial that it was a copy of a circular that he sent to all his office department heads. That interrogation was conducted without objection, and it simply lays a foundation for the introduction and corroborates the testimony already given. And I don't think that the year 1953 is so remote from the year we are talking about, which is the beginning of 1955. [fol. 388] Mr. Hitz: Mr. Donner has made it a little more clear than I had in mind before, why he offered No. 3; that it bore upon legislative purpose, exposure, and whatever.

Mr. Donner: First Amendment.

Mr. Hitz: That was the posture of the case at the time that he did offer it and at which time we did not object. Although I don't think strictly speaking it is admissible, I think it may just as well be in for what it is worth rather than to spend time, if the time should ever arise, in trying

to justify its exclusion. That is why, just now when I made a motion to strike 3, I said, unless Mr. Donner can give some further reason than its connection now with Mr. McClaren. He has done that and I think that rather than have 3 excluded for all purposes, upon my present motion to strike, that perhaps it would be better for me to say that I do not feel that it should be received in evidence for any connection that it may have with 3-A.

The Court: Let me interrupt you to say this to you: My disposition, unless you convert me, Mr. Donner, I don't think the Committee would be responsible for what was done by Mr. McClaren.

Mr. Donner: I am introducing it to show that it was circulated and was used by the personnel manager of this [fol. 389] plant, and that this is a characteristic procedure of the Committee.

The Court: I will deny your 3-A, because I don't think that the Committee is charged with what Mr. McClaren did.

I understand that you are withdrawing your objection to 3, in the light of what has been said?

Mr. Hitz: If 3-A goes out, I think 3 then can stand on whatever feet it had before.

The Court: I don't think the Committee is charged with what Mr. McClaren might do. I deny 3.

Mr. Donner: Your Honor, I just want to point out that the testimony says "This is a copy of a circular sent from my office to all of the department heads and foremen.

"Question: What is the circular to which it is attached?

"Answer: The circular to which it is attached is a report, a copy of a report from the files of the Committee on Un-American Activities.

"Question: Mr. McClaren, how did you obtain that copy?

"Answer: Through the Congressman from our district."

Et cetera.

[fol. 390] So that I am not saying that the Committee is directly responsible, but I am saying that it is relevant to this case because it had something to do with the background of the case. For example, the Government has in-

troduced a long wire telegram, in which the defendant complained of the activities of the Committee, including its interference in the election. Now, Your Honor, it seems to me that we have a right to show why the defendant sent that telegram. Otherwise, you have one piece of evidence in the record on the side of the Government without any explanation of why it was sent. And it was sent because, among other things, this kind of thing was circulated in the plant.

Let me read the wire, and you will see what I mean.

The Court: You need not read it. I have read it.

Mr. Hitz: Are you speaking of that long telegram?

Mr. Donner: Yes. Sure.

The Court: I don't think it is worth being disturbed about. But you are saying that this shows action by Mr. McClaren which in its inception can be charged to the Un-American Activities Committee?

Mr. Donner: No, I am not saying that at all, Your Honor. [fol. 391] I am making this point: The Government has made relevant to the case the witness's response, very angry response, to the fact that he was subpoenaed. Now I want to show, and I think I have a right to show, what the background of that was.

The Court: And I assume—you correct me—you are saying that the background was because the Committee was disclosing matters to other people.

Mr. Donner: Because the witness felt that the Committee was in cahoots with the company.

The Court: And does that not reflect itself, according to your theory, with 3?

Mr. Donner: But you need the further proposition that it was circulated by the company personnel director. That is why he was mad. That is why the witness was mad.

The Court: And that would go to what?

Mr. Donner: Go to the reason why this wire was sent; why he felt it was an exposure hearing; why he filed this motion, complaining it was an exposure hearing; why he sent the telegram.

Mr. Hitz: Your Honor, what he has said emphasizes the irrelevance and the immateriality of this because of the [fol. 392] date of the circulation. It was back in 1953. And if it took that long for Mr. Gojack to get concerned enough to write that telegram, I am misjudging the gentleman.

Mr. Donner: Your Honor, the Committee claims, and the record shows, that this kind of material was just sent to Congressmen. Now I want to show, and I think I have a right to show, that it wasn't just sent to Congressmen, and that it wound up in the hands of individuals who used it for their own purposes.

The Court: I think that you are showing, and by 3, that the Committee did provide this information. Is that right?

Mr. Donner: That is what that purports to show.

The Court: To whom did this go?

Mr. Donner: That went to Ross Adair. That is shown in the record of this.

The Court: Now, from there on what, if anything, did the Committee do?

Mr. Donner: It isn't what the Committee did. The Committee should know that when material like that goes out, it is used for these purposes, Your Honor. The Committee can't be absolved from blame simply because it gives it to a Congressman.

[fol. 393] The Court: I will receive it, over your objection, Mr. Hitz. I don't think it is that material.

(Defendant's Exhibit No. 3-A for identification was received in evidence.)

The Court: We now have 3 and 3-A.

Mr. Rein: Continuing reading, I would like to take up now page 159, skipping colloquy between counsel.

"Q. Can you tell me this: Subsequent to October 6, 1953, did you ask your Congressman to get any supplementary or later reports on Mr. Gojack?

"A. No.

"Q. Did you, subsequent to 1953, obtain reports on any other union officials?

"A. Not that I remember."

• • • • •

[fol. 395] The Court: The record will so reflect.

(The material mentioned, exclusive of the colloquy, is copied into the record as follows:)

"Mr. Pollitt: The 1954 committee report, which I believe is Government Exhibit [11]. At this time we would like to call the attention of the Court to page 3 of the report, to the fourth full paragraph beginning 'In addition to the hearings and reports of the committee during 1954.'

• • • • •

"Mr. Pollitt: 'In addition to the hearings and reports of the committee during 1954, there has been continued the [fol. 396] singularly valuable service provided to Members of Congress, congressional committees, and duly authorized agencies of the Federal Government by the committee's files and reference service. With the ever-increased interest aroused by the expanded knowledge of subversive activities, there has been a proportionate increase in requests for information from the committee.'

"And then on page 10, the first and second full textual paragraphs:

"The committee has become increasingly aware of the ability of former members of the Communist Party to transfer their domicile more or less at will in an attempt to escape investigation and/or directly testifying before the committee.

"Such is the case of one Lillian Brill Clott, an employee of the Hungarian People's Republic while in Washington, D. C., who was able to obtain employment in Columbus, Ohio, with a public relations firm, after being identified as a former member of the Communist Party by Mary Stalcup Markward. Her refusal to answer any and all questions relating to present or past membership in the Communist Party identified her with the several hundred others who [fol. 397] have appeared before the committee in the past year and answered similarly.'

"On page 14, at the bottom of the page, the paragraph running over to page 15:

"These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained."

"On page 17, the second full paragraph—I beg your pardon; the first full paragraph:

"During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. Most of the teachers subpoenaed before the committee refused to answer questions with respect to their membership in the Communist Party, on the ground that to do so would tend to incriminate them. Most of the teachers called have been suspended or permanently removed from their positions. The Committee on Un-American Activities approves of this action because the committee has found that the delivery of a student into the tutelage of a member of the Communist Party has been responsible for the destruction of thousands of American homes."

"Mr. Pollitt: Your Honor, this is the annual report of the Committee on Un-American Activities for 1953. I am offering only, as I said, certain extracts from this, which I would like to read to the Court."

"Mr. Pollitt: On page 1, material beginning,

"From witnesses testifying under oath before the committee, approximately 100 names of teachers past and present who were members of the Communist Party were received. In this connection it should be pointed out that there was no instance in which the committee endeavored in any way to ascertain the curricula of any school or to in any manner examine classroom procedures or the teaching methods of an educator. The focal point of the investigation into the general area of education was to the individ-

ual who had been identified as a past or present members of the Communist Party.'

"On page 3, the last paragraph beginning on page 3, and running over to the top of page 4:

"The House Committee on Un-American Activities has remained vigilant to determine whether there are any individuals now employed by the United States who are present or past members of subversive organizations. In the hearings conducted by the subcommittee in Albany, New York, testimony was received from two former members of the Communist Party that the Commissioner of the Federal Mediation and Conciliation Service in Cincinnati, Ohio, had been known to them as a member of the Communist Party. In the investigation of this matter it was determined that this Federal employee, James F. McNamara, had, on the basis of previous investigation by the Federal Bureau of Investigation, been given three loyalty hearings to determine his suitability to continue in Government service. On all three occasions McNamara had denied that he had ever been a member of the Communist Party, and in the face of FBI information to the contrary, he was cleared. Shortly after he had been served with a subpoena to appear before the committee, McNamara submitted his resignation to the Federal Mediation and Conciliation Service. When he did appear, McNamara admitted that he had been a member of the Communist Party and had broken with it some years ago. The committee believes it to be a fact that James F. McNamara did break with the Communist Party as he stated under oath. However, his case serves as an example of the continuing necessity for the work being [fol. 400] performed by the House Committee on Un-American Activities. The Federal Bureau of Investigation had conducted a thorough inquiry and had in due course reported the results of its investigations to the proper authorities. However, in the face of the FBI reports, no further steps were taken by the agency concerned, and it was not until investigation by this committee that the true facts were determined and McNamara's employment terminated.' On page 27, the third full paragraph:

"During 1953, the committee released testimony that had been taken from Larry Parks in executive sessions on March 21, 1951. In the course of its questioning, Mr. Parks was asked about numerous individuals prominent in the motion picture industry. This fact should not be construed as an identification of these individuals as members of the Communist Party unless subsequent testimony has established such identification.'

"On page 60, the first full textual paragraph on the page:

"It would be a great step in the progress of the committee's work if all persons who find themselves in circumstances similar to those of Artie Shaw would realize that [fol. 401] all they need to do is communicate with the committee, the chairman or its members, in order to clarify or elaborate on any information the committee possesses relative to themselves.'

"Page 99, the full material contained on that page, headed, 'G. Bromley Oxnam.'

"The Reverend G. Bromley Oxnam is Bishop of the Methodist Church for the Washington, D. C. area. On July 21, 1953, Bishop Oxnam appeared before the committee as a result of a request by him that he be heard. Bishop Oxnam informed the committee that certain information in the committee files relating to him was in error. As in every instance of this kind where a person feels that there is erroneous information or information which might require clarification, the committee is pleased to take every reasonable step to insure that the information is corrected or clarified. In fact, Bishop Oxnam had been extended an invitation to appear before the committee as early as October 1951. The committee believes that the full record of the hearing afforded Bishop Oxnam will now serve to correct and clarify any erroneous information that might have been contained in the files relating to him.'

"And on page 127, the section of the report headed 'Con-[fol. 402] sumers Union':

"It will be noted in other sections of this report that the committee has made every effort to alert individuals and organizations who feel that their names are unjustly reflected in the committee's records or testimony to communicate with the committee to rectify or clarify their position. A very tangible example of the success that the committee has gained in these efforts relates to the Consumers Union, which is the publisher of Consumer Reports. This organization on the basis of information in the committee records had been cited by the Special Committee on Un-American Activities in 1944. Steps were initiated by Consumers Union through its officers and legal counsel to clarify this situation. After hearings and thorough study the committee finds there is no present justification for continuing this organization as one that is cited, and future reports and publications will reflect that this organization has been deleted from the list of subversive organizations and publications. It cannot be pointed out too frequently that the fact that an organization has been cited as subversive or as a Communist front does not mean that such citation is [fol. 403] irrevocable. Steps such as those taken by Consumers Union can lead to a proper clarification by the committee."

"And on pages 132 and 133, the full text of both pages:

'Files and Reference Service

"For a number of years this committee has maintained a specialized reference service in the field of subversive activities insofar as furnishing any information that may appear on a given subject in the committee's own public records, files and publications. This service is available at present only to Members of Congress, the representatives of the Executive Branch of the Government, and of course, to all staff members of this committee, varying somewhat according to type and amount of material found and the needs of the persons seeking the information.

"Due to the confusion that has arisen as to the nature of the committee's files, it should be stated that the material from which reports are prepared for Members of

Congress and other authorized committees and agencies is compiled from public sources such as newspapers, magazines, authenticated letterheads, and other documents available from public sources, and could be compiled by personal [fol. 404] research on the part of any individual. These files are distinguished from the investigative files, which material is not available to anyone except the committee investigators themselves. It should be noted that no information which is voluntarily given by individuals or groups is incorporated into these files unless the source and nature of the material has been adequately checked to insure its accuracy and validity.

“Each report that is furnished from the committee’s files contains the following disclaimer:

““The public records, files and publications of this committee contain the following information concerning (organization/individual). This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individuals and/or organization referred to above are not necessarily Communist, Communist sympathizers or fellow travelers unless otherwise indicated.”

“The Members of Congress make constant use of this service with queries ranging all the way from a request for the prompt verification of a single point or a brief summary of available material, to the submission of a list [fol. 405] of both individual and organization names, for a complete check or full report on each item. In every case a complete check of the pertinent indexes and source material must be made before an answer is supplied. But the answer may be given in either verbal or written form, verbal answers being employed only when so requested and the material may be summarized briefly and easily, or when a check has shown that we have no information to report on this subject. The more usual type of request, however, is for a complete written report setting forth not only what has been found but also where each reference appears.

"Much the same conditions prevail in regard to supplying information to the committee's staff members, who, although they often wish to examine or borrow the source material itself, also need that information assembled for them into readily accessible written form to use in connection with the extensive investigations being conducted under the direction of the committee.

"On the other hand, the executive departments and agencies which are required by executive order to make a check of the committee's files send their own representatives to make a check of the indexes to the material con-[fol. 406] tained in the files and publications. The staff of this section is required to furnish these agents only such reference service as is involved in pointing out the reference sources, explanation of how the material indexed is recorded on the index cards, and the withdrawal of exhibit material from files for their examination when specifically authorized to do so.

"Neither the extent of the subject matter contained in the reference questions nor the time and work involved in furnishing the answers can be reduced to figures. The following statistics, however, do indicate something of the steady over-all growth and demand for the service. A count has shown that a total of about 3,800 requests for information on 10,695 individuals in 2,459 organizations was received and answered by this section during the past year. This resulted in the furnishing of written reports covering 7,687 individuals and 882 organizations and, as compared to the 1952 count, represents an increase of 200 in the total number of requests received, with 1,195 more individual and 459 more organization names included in the requests. A further comparison of figures for the two years has shown 2,338 requests received from and 1,285 [fol. 407] written reports supplied to the Members of Congress as against 2,400 requests received and 1,440 written replies to them in 1952, a small decrease which may have been caused by a change in the office procedure of handling requests.

"The total number of visits made to the files by the designated representatives of the executive departments and agencies has shown a decline from 6,260 in 1952 to 4,880 in 1953. This does not indicate any lessening of interest in or use of the committee's reference material as it may seem to appear on the surface, for the average length of each visit has increased appreciably with more persons than ever before assigned full time to the checking of our records.

"Equally important, though not always remembers, is the fact that such reference service, to be reliable, requires the proper care and handling of old material as well as the constant acquisition and proper classification, cross referencing and indexing of new material. The age and volume of the committee's valuable collection of pamphlets, periodicals, books, newspapers, leaflets, letterheads, and other source material both primary and secondary has presented [fol. 408] problems of housing, handling, and processing which continue to increase in difficulty in direct proportion to those factors. Pressure of work has not afforded time for keeping an accurate running count of the amount of file material acquired, the number of index cards added, or the number of pieces classified and processed for files. However, it seems fair to estimate that the acquisition, classification, and indexing of the Communist press source material has kept apace of other years and that approximately 4,000 pages of the printed hearings and reports of this committee, already indexed, have been added as compared to the 2,827 pages of publications received and indexed by this section in 1952.'

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"Reading of Excerpts From Various Sources Into Record.

"Mr. Pollitt: From the annual report of the Committee on Un-American Activities for the year 1952, the first extract is from page 6, the second full paragraph:

"The committee also heard during the year testimony of Dr. Edward U. Condon, former director of the National Bureau of Standards. As a result of this hearing the com-

mittee is of the opinion that while it has no proof that [fol. 409] Dr. Condon was ever a member of the Communist Party, his persistent association with people who were either disloyal or of suspected loyalty, coupled with his public endorsement of some of these associates, in the face of unshaken testimony to the contrary, and his failure to make any inquiry to ascertain the true facts, as well as his obvious contempt for any form of security regulations, disqualify him from holding any position in which he would have access to information of a confidential and secret nature.'

"On the same page and two paragraphs down:

" 'In order that the American public might fully realize that the Methodist Federation for Social Action is using the name of one of our largest and certainly most loyal religious bodies without authorization, the committee prepared and released a report which was a review of the Methodist Federation for Social Action.

" 'The committee would like to state that during this year there has been an unprecedented demand upon its file and records service, and more than ever before by the executive branch of the Government. There has been a widespread demand upon the committee for its publica-[fol. 410] tions. We regret that in many instances publications are exhausted before they are secured by all those desiring them. Wherever possible, this committee has had additional prints made.

" 'In this annual report the committee feels that the Congress and American people will have a much clearer and fuller picture of the success and scope of Communism in the United States by having set forth the names and where possible the positions occupied by individuals who have been identified as Communists or former Communists during the past year. In the matter of hearings relating to the motion picture industry and professional groups, the committee is including those individuals who were named during 1951, inasmuch as these hearings have been of a continuing nature.'

"Turning next to page 12, the first full paragraph:

"The hearings show the great strides that have been made in removing them from the other auto locals. In congratulating the workers in these locals for ridding themselves of Communist leadership, your committee wishes to point out that evidence uncovered during the investigation discloses the Communists formerly employed in white collar positions are taking up trade work, and as unknowns [fol. 411] in the communities are obtaining employment in the auto industry. Some of these are already working within various locals.'

"Turning next to page 40, the first full paragraph:

"The committee originally instituted an investigation to ascertain the scope and success of Communist efforts to infiltrate the motion picture industry in 1945. As a result of this early investigation, hearings were held in 1947, at which time the committee subpoenaed ten persons associated with the industry who had been identified as members of the Communist Party.'

"I beg your pardon; I will withdraw that excerpt if I may. There seems to be no point.

"On page 40, the sentence reading:

"The committee wishes to urge that all fields of entertainment and culture maintain a steadfast vigilance in order to avoid the possibility of further Communist infiltration into them.'

"Page 57:

"The following individuals who have been identified as members of the Communist Party are being listed as having associated with the various professional groups in the Los Angeles area. It is recognized that in many instances the [fol. 412] identifying information does not classify the individual as being engaged in a profession, but since the testimony was received from individuals whose principal information deals with professional groups, they are being included herein. It should also be noted that with these identifications it does not necessarily indicate the present

position or occupation of the individuals, but indicates the identification furnished by the witness.'

"On pages 73 and 74, material headed, 'Dr. Edward U. Condon.

"'Dr. Edward U. Condon was appointed director of the National Bureau of Standards in November 1945. His appointment was made even though it was known at that time by the executive branch of Government that Dr. Condon had not been permitted to visit Soviet Russia and that a passport issued by the State Department had been revoked on the request of intelligence authorities.

"'Dr. Condon had, early in the development of nuclear fission, been offered a position on the atomic bomb project at Los Alamos, New Mexico. After a short while Dr. Condon rejected that appointment, voicing his disdain for the security regulations which were necessary at Los Alamos. [fol. 413] "'During the course of its investigations to ascertain the extent and success of Soviet espionage activities relating to the atom bomb, the committee was amazed at the numerous instances in which it was disclosed that Dr. Condon was acquainted with known and suspected espionage agents. The committee did not nor does it now possession information that Dr. Condon was a Communist or committee any act of espionage. However, because of his associates and his disdain for security regulations, the committee recognized his vulnerability in any post of security. For this reason, the committee issued a report in 1948 setting forth the information it possessed concerning Dr. Condon's associations. It was hoped that Dr. Condon would voluntarily resign, but if he did not, it should serve as a warning to Dr. Condon, as well as security officers, that his associations disqualified him from access to qualified material. Dr. Condon did not resign, but rather attempted to justify his associations, and not only claimed his lack of knowledge of any espionage activities on the part of these people, but in some instances went so far as to voice confidence in their complete honesty, notwithstanding unshaken testimony of others, even though he made

[fol. 414] no inquiry as to the veracity of these charges. Dr. Condon adopted the attitude that because he had not appeared before the committee, he had been maligned when the report was issued, although he did not deny his association with these known and suspected Soviet espionage agents, but claimed that his associations with them were perfectly normal, and that he had not engaged in espionage with them.

"In 1952, a Member of Congress, in prefacing a statement on the floor of Congress, charged the committee with failure to hear Dr. Condon. As a result, the committee voted to invite Dr. Condon to appear before it. Dr. Condon declined the invitation, and the committee voted to subpoena him. Dr. Condon was heard on September 5, 1952, at which time he reiterated his lack of knowledge of the espionage activities of the persons the committee had named as having associated with him, and denied having ever been a Communist. Dr. Condon's appearance, however, served to confirm the committee's belief that because of his propensity for associating with persons disloyal or of questionable loyalty, and his contempt for necessary security regulations, that he is not qualified for accept-[fol. 415] ability to any security position."

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"Mr. Pollitt: On pages 77 and 78:

"The reference service furnished during the year has shown a steady increase, reflecting a greater growth in the amount of information requested."

"(After consulting with Mr. Donner:) I will withdraw that."

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"Mr. Pollitt: On the other hand, this material does seem to be relevant, on page 78:

"A certain amount of reference service has also been furnished this year in answering some requests made by private individuals who showed a sincere and genuine need for information of the type which is available here. Answers to such inquiries were necessarily greatly restricted

both as to number and to length of answer, because our staff is not large enough to supply any considerable service of this kind.'

"And the 1951 report, the annual report of the Committee on Un-American Activities for the year 1951, page 1. On page 1:

" 'The committee has also frequently invited any person [fol. 416] named in testimony before the committee as being a member of the Communist Party or Communist front organization to come before the committee to either affirm or deny the statements made concerning him.'

"On page 2:

" 'Hearings conducted in 1947 resulted in the identification of ten persons associated with the motion picture industry as members of the Communist Party.' Then, going further down the page:

" 'It is the hope of the committee, after having conducted the 1947 hearings, that the motion picture industry would accept the initiative and take positive and determined steps to check Communism within the industry. Unfortunately, however, the spokesmen for the industry persisted in that time in painting an unrealistic picture of Communism in Hollywood, and some, at least, would have had the American public believe that there was no such thing as organized Communism in the motion picture industry.

" 'The committee pursued its established policy that whenever it is obvious that a responsible group, whether in industry, labor or an independent organization, does not perform its duty in guarding itself against Communist [fol. 417] influence, then the committee must expose this defect. So it was in the motion picture industry. The committee's hearings in 1951 resulted in the identification of more than 300 persons associated with the industry as members of the Communist Party. There were varied opinions given by the witnesses as to the success of the Communists in influencing the contents of motion pictures. The fact was evidence that such efforts were made.'

"On page 5:

"During the past year, this committee has been subject, as have many congressional committees in the past, to the efforts of various pressure groups. The committee recognizes that for the most part, all of the American public is interested in the proper identification of Communists and Communist endeavors. The committee, however, cannot lend itself to any selfish aims to discredit or defame any persons or groups. To this end, the committee must affirm its directed aims to investigate subversive and un-American activities, and takes this opportunity to invite any person having definite information concerning the identities of any Communists or knowledge of subversive en-[fol. 418] deavors, to furnish such information to the committee.'

"Page 6:

"During 1951, the committee's hearings disclosed the positive identification of more individuals as members of the Communist Party than during any preceding year in the history of the committee.'

"On page 8:

"The committee was astuodnded when the true extent of Communist infiltration and manipulation in the Hollywood motion picture industry was disclosed. The committee had assumed that its 1947 hearings had served to minimize the power of the Communist Party among the devotees of the silver screen. However, it was found during the course of the 1951 hearings that actually the 1947 hearings had not lessened the extent of Communist infiltration in Hollywood, and had not prevented the flow of money from Communists and fellow travelers employed in the industry to the Communist Party.' Then, further down the page:

"The committee's investigation of the motion picture industry was concerned almost entirely with the problem of exposure of the actual members of the Communist Party, and did not deal, except in a few instances, with the problem [fol. 419] of those who held or had held the status of fellow travelers.'

"On page 9:

"'During the 1951 hearings of the committee, dealing with the Hollywood motion picture industry, there were more than 300 persons connected with the industry who were definitely identified as members of the Communist Party, either past or present.'

"On page 16:

"'History alone will show how many of Professor Struik's students were led by him down the road to Communism from which they were unable to return until they had performed acts against their country and fellow citizens. The administrators of the Massachusetts Institute of Technology share equally if not more so the responsibility for leading these young people away from American ideals and democratic principles.'

"And on page 17:

"'With individuals like Professors Struik and Mather teaching in our leading universities, your committee wonders who the Professor Struiks were at Harvard who led Alger Hiss along the road of Communism until he committed espionage against his country.'

[fol. 420]

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"Mr. Pollitt: 'Who were the Professor Struiks at Columbia who led Elizabet Bentley into her eventual role as courier in the Soviet espionage apparatus? Who were the Professor Struiks responsible for leading the Rosenbergs, Hiskey, Gold and others into their espionage roles?'

"'The committee has read newspaper accounts of the concern voiced by leading universities over football and their plans to de-emphasize the sport. When will our colleges display the same concern over the activities of Professor Struiks and his kind and de-emphasize Marxism?'"

• • • • •

"Mr. Pollitt: Yes, Your Honor. That concludes that portion.

"Reading now from the annual report of the Committee on Un-American Activities for the year 1950, House Report No. 3249, on page 4:

"While this legislation cannot be retroactive, the committee intends to devote a major share of its efforts to a continued investigation of the persons who have engaged in espionage and the proof of their activities. As illustrated by the Scientist "X" case, this is a long, tedious process. A score of witnesses in the Scientist "X" case have been located and subpoenaed by the committee. Prosecution is not yet possible because a majority of these witnesses refuse to cooperate with their Government, even though they themselves are not involved in any espionage activity, by refusing to answer questions relating to their Communist Party activities, on the ground of self-incrimination.'

"Continuing on page 4, further down the page:

"An extensive investigation was conducted into the activities of Agnes Smedley. This committee planned to subpoena and expose the activities of Agnes Smedley upon her return from England, but because of her death, the results of this investigation have not been made public.'

"On page 25:

"The Committee on Un-American Activities, on September 17, 1950, issued a report on the National Lawyers Guild, exposing that organization as a Communist front and recommending that the Attorney General of the United States place this organization on its list of Communist fronts.'

"On page 27:

[fol. 422] "The petition being generally circulated in the United States is under the sponsorship of the Peace Information Center, headed by Elizabeth Moos, the mother-in-law of William Walter Remington, now on trial for perjury

relating to his Communist Party membership. In addition to these petitions, other petitions identical to the Stockholm 'Peace Pledge' are being circulated by the Labor League for Peace, the Maryland Committee for Peace, and other State bodies. The committee has advised the American people not to affix their signatures thoughtlessly to this appeal, being aware of the implications and seriousness of such acts.'

"On page 41:

"The committee has made readily available as a reference facility a collection of lists of signers of Communist Party election petitions obtained from original petitions or photostatic copies of original petitions which contained 363,119 signatures for various years in 20 states. Its reference collection includes information and documentary evidence collected by staff investigators, officials' records obtained from other agencies, and data supplied by law enforcement agencies.'

[fol. 423] "And on page 42:

"The consolidated card files of the committee now contain more than half a million card references which serve as index to source material on file.'

"Turning now to the annual report of the Committee on Un-American Activities for the year 1949, page 7:

"On May 24, 1949, Hiskey was given an opportunity to defend himself with the assistance of counsel against accusations made before the committee. He refused to affirm or deny the charges on the ground of self-incrimination.'

"Page 15:

"The committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on Un-American Activities in August 1938. The committee

would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and expose of the Communist fifth column.'

• • • • •
 "Mr. Pollitt: On page 9 of the 1949 report:

"On August 10, 1949, Thomas J. Fitzpatrick, Frank Panzino, and Robert C. Whisner were given a full opportunity by the committee to answer the charges which had been made against them.'

"That ends the 1949 report."

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 "Mr. Pollitt: The next document, Your Honor, from which I propose to offer excerpts, is the document entitled, 'This Is Your House Committee on Un-American Activities,' a publication prepared and released by the committee in 1954."

• • • • •
 "Mr. Pollitt: The first excerpt is on page 17:

"Question 71: Of what value has the House Un-American Activities Committee been in exposing subversive activities?

"For a period of many years the House Committee on Un-American Activities was the only Federal body that was furnishing the Congress and the American people with information relating to subversive activities. The true facts of Soviet espionage operations were known to the FBI but it was powerless to act because of administration restrictions. The committee, through its investigations, hearings, and reports, (has over the past years exposed many of these espionage operations. The committee has distributed hundreds of thousands of printed hearings and [fol. 425] reports and held hearings throughout the United States, exposing subversive activities and gathering information upon which Congress has based legislation.'

"On page 18, Question 76:

"Has the committee actually had the names of more than a handful of persons who were members of subversive groups?

" 'Since 1948, the committee has had positive identifications of 4,151 persons who were members of the Communist Party in the United States. Of this total number, 2,381 have been named during this 83rd Congress by witnesses under oath before the committee.'

"On page 25, Question 105:

" 'How has the committee assisted in disclosing the operations of the Communist Party and its fronts?

" 'This committee and the special committee have, over the past 16 years, held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts.'

"The next document, Your Honor, is another committee document, entitled, '100 Things You Should Know about [fol. 426] Communism,' dated May 14, 1951. (Handing up to Court)."

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"Mr. Pollitt: On page 16, Question 64:

" 'How can a Communist front be identified?

" 'If you are ever in doubt, write the House Committee on Un-American Activities, Room 226, House Office Building, Washington 25, D. C.'

"Page 19, Question 89:

" 'What is the best way to combat Communism?

" 'Detection, exposure, and prosecution.'

"Question 90:

" 'Are these being done?

" 'Millions of dollars have been spent by the Federal Bureau of Investigation, Army and Navy Intelligence, and

other executive agencies, to detect and keep tract of Communists since the party's organization in this country a general ago. Exposure in a systematic way began with the formation of the House Committee on Un-American Activities in May 26, 1938.'

"On page 67, Question 2:—

"I might explain the '100 Things' is actually a number of [fol. 427] documents, each of which run to a hundred questions and answers, so that the numbers are actually in order as given.

"Question 2: Well, aren't the unions being investigated by your committee?

"No. Investigating unions as such is not the committee's job, and so the committee does not do it. The House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks."

"Page 71, the following statement from the answer to Question 27:

"However, this committee, the Department of Justice and other official agencies issue from time to time lists of Communist front organizations and outright party groups.'

"And page 76, Question 48:

"How can Communism be stopped here?

"First, detect the Communists at work around you. Second, expose them in all their connections. Third, where [fol. 428] ever possible, force their prosecution under the laws of our country.'

"On page 125-126, headed— Well, I will read it in full.

"Congress of the United States House of Representatives, Committee on Un-American Activities, Washington, September 21, 1950.'

Then the heading, 'Release.' The text is as follows:

"In a report dated March 29, 1944, the Special Committee on Un-American Activities listed the United Gas, Coke, and Chemical Workers of America as an organization in which "Communist leadership is strongly entrenched." In a publication issued in December of 1948, entitled, "100 Things you Should Know About Communism and Labor," the Committee on Un-American Activities repeated the foregoing statement in answer to the question, "What unions have the Communists controlled?"

"Upon request of the officers of this union, a subcommittee of this committee on August 17, 1950, heard the testimony of Mr. Martin Wagner, president of the organization. From this evidence the committee finds:

"1. The United Gas, Coke and Chemical Workers of [fol. 429] America has taken energetic and effective measures to eliminate such influence.

"2. All persons against whom substantial evidence of Communist activities or views exists in the records of the Committee on Un-American Activities have been removed as officers.

"3. The charters of local unions found by the parent organization to be following the Communist Party line have been revoked.

"4. According to a constitutional amendment adopted by the union, no person who is a member of a Communist, Nazi or Fascist organization may be a member of the executive board or an employee of this union.

"Upon this testimony, the Committee on Un-American Activities had adopted a resolution providing:

"1. The name of the United Gas, Coke, and Chemical Workers of America shall be dropped from future editions of the committee pamphlet, "100 Things You Should Know about Communism."

"2. No additional copies of the present issue of any committee publication containing reference to this union shall be issued without notation that the statement about the union is no longer true.

[fol. 430] "3. Any statement by any person to the effect that this committee now finds that the United Gas, Coke and Chemical Workers of America under its present officers and by-laws to be under Communist influence or leadership is unauthorized and untrue.

"4. That a copy hereof over the signature of the committee chairman shall be furnished the union.

"The foregoing is a copy of the action taken by the Committee on Un-American Activities on the report of the subcommittee appointed to hear the testimony of Mr. Martin Wagner, president of the United Gas, Coke and Chemical Workers (CIO). John S. Wood, Chairman, Committee on Un-American Activities.'

"The next document is a committee publication entitled 'Organized Communism in the United States.' From this I will just read the last two paragraphs in page 2."

• • • • •
 "Mr. Pollitt: 1953.

This is on page 2 of the report.

"A careful study of the calls, conventions, constitutions, manifestos and directives adopted or issued throughout these past 34 years will give the American people a better [fol. 431] understanding of the true meaning of Communism and will effectively demonstrate that it is not only the threat of Soviet-inspired subversion, spying and sabotage that constitutes a danger to our free institutions, but that the philosophy of Communism, in whatever form or whatever name it may appear, regardless of how cleverly it may be camouflaged or how attractively it may be packaged, is an even more dangerous threat to the American system of society and government.

"The following resume of the background of organized Communism in the United States is intended to serve this purpose."

[fol. 435] The Court: Very well, Mr. Donner, I have read the part.

(The material mentioned, exclusive of the colloquy, is copied into the record as follows:)

"The next material I would like to offer the Court is contained in the hearings of the committee on 'Communist Methods of Infiltration—Education,' Part 3, on page 998, the colloquy between a witness and Mr. Clardy, a member of the committee.

"Mr. Polumbaum. I believe that this committee—if this committee has any evidence of illegal activities or illegal conspiracy, it is certainly within its right to bring this evidence before the proper authorities and have any persons so charged brought into court.

[fol. 436] "Mr. Clardy. That is what we are doing. We are bringing it to the attention of the American people—the real jury that will convict those of you that may be engaged in that conspiracy."

Mr. Pollitt: The next matter is an excerpt from page 1106 of the hearings before the Committee on Un-American Activities, 83rd Congress, a document entitled, 'Communist Methods of Infiltration (Education), Part 4.'

"(Handing up to Court.)

"The colloquy there is between—or it actually consists of a statement by Mr. Velde, the chairman of the committee, as to the purposes of the committee.

"Mr. Hitz: We object.

"The Court: You object?

"Mr. Hitz: I do object, Your Honor.

"The Court: Sustained.

"Mr. Pollitt: I don't want to press Your Honor's ruling, but I do submit that the statement of the chairman has more authority than the statement of a member.

"The Court: Well, my ruling is the same.

"Mr. Pollitt: Yes, Your Honor. Then I will make this by way of offer of proof.

"(Thereupon, Mr. Pollitt tendered the following proof, [fol. 437] which was copied by the reporter and is reproduced below:)

"Mr. Velde. I was in the Federal Bureau of Investigation for some time, and I am aware of the fact that while every attempt is made to discover subversive activities by the Federal Bureau of Investigation, like all other intelligence agencies they are not infallible, and I can assure you very definitely that the Federal Bureau of Investigation does not have the complete roster of members of the Communist Party and does not have a complete list of all of the persons in this country who are engaged in subversive activities. That fact has been brought out. I think Mr. J. Edgar Hoover and the Federal Bureau of Investigation are fine people and it is a great organization, but they are not infallible.

"So as a committee of Congress, elected by the people, we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purpose of remedial legislation but to inform the people who elected us about subversive activities. Frankly, I think that at the time you became dissatisfied and with-[fol. 438] drew from the Communist Party, as an American citizen it imposed a duty upon you to apply to some agency of Government which was interested in subversive activities. You say you knew they were investigating you. I mean that in all respect, but I just want to put that in the record.

"Mr. Pollitt: The next material, Your Honor, we do not have in its official form, but Mr. Hitz has agreed that it is an accurate representation. It consists of two portions of

committee reports, at the bottom of page 151 and running over to 152, in the record of the Watkins case.

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"Thereupon, the above offer of proof, from Joint Appendix in the United States Court of Appeals, No. 12,797, John T. Watkins, Appellant, v. United States of America, Appellee, was copied by the reporter:)

"Special Report on Subversive Activities Aimed at Destroying Our Representative Form of Government—77th Congress—2nd Session, 1942.

"This committee has defined its special function, in accordance with the terms of the mandate given by the House, as the discovery and exposures of those enemy groups which fight with non-physical weapons as a fifth column [fol. 439] on our home front.

"On October 25, 1939, the committee made public the names, positions, and salaries of some 563 Government employees located in Washington, D. C., who were members of the American League for Peace and Democracy. In three reports which this committee has made to the House, it has found the American League for Peace and Democracy to be a Communist front organization. It will be recalled that Earl Browder was vice president of that organization. Furthermore, the Attorney General, Mr. Francis Biddle, has branded the American League a subversive organization, in language as strong as any used by this committee in its character. In making public this list, the committee issued an accompanying statement which made clear that it did not consider all of the people on that list or any one of them in particular to be Communists, but in view of the fact that these Government employees were members of a Communist front organization and continued their membership long after the organization was exposed as being Communistic, the committee felt that the Congress and the people were entitled to know who they were. This was an [fol. 440] authentic membership list obtained from the headquarters of the American League for Peace and Democracy

by due process of subpoena which was served upon the secretary of the organization.

"Report of the Committee on Un-American Activities, 79th Congress, 2nd Session, 1946. H. Rept. 2742.

"The committee, during the past two years, has assembled an exhaustive file on every known subversive individual and organization at work in the United States today. The committee's system of cross indexing, filing, and master filing is considered one of the outstanding systems of this type in the United States. The files of the committee are used daily as sources of information by practically every investigative division of the Federal Government.

"Mr. Pollitt: The next material I wish to offer is material from a hearing before the Committee on Un-American Activities in 1953, entitled, 'Communist Methods of Infiltration (Education—Part 2),' on page 221, a statement by Mr. Velde, made in the opening committee hearing.

"(Handing up to Court.)

"Mr. Hitz: We object.

"The Court: Sustained.

[fol. 441] "Mr. Pollitt: I will make this, may I, by way of an offer of proof.

"(Whereupon, the reporter copied the following matter as the offer of proof referred to:)

"Communist Methods of Infiltration (Education—Page 2)—Hearing before the Committee on Un-American Activities—House of Representatives, 83rd Congress, 1st Session, March 12, 13, 17, 18, April 14, 16, 1953.

"Mr. Velde. * * * in relation to the appearance of Abraham Glasser, professor in the Rutgers University School of Law, the committee wishes to acknowledge and express its appreciation to Rutgers University and its officials for the excellent cooperation it has extended the committee. The committee wishes to state that it hopes that the excellent spirit of cooperation exhibited by this outstanding university might serve as a model to other colleges and

other universities in the United States. There has been no implication nor misunderstanding that the committee, in hearing Mr. Glasser, has in any manner instituted or conducted any investigation of Rutgers University.

"Mr. Pollitt: The next material is in the report of the [fol. 442] Special Committee on Un-American Activities, House Report No. 2, 1939, on page 13, the first sentence of the second full paragraph. In support of this material I wish to point out that the earlier portions of the committee reports which I read had adopted as their own the full history and procedure of the committees since the foundation of the committee in 1938. (Handing up to Court.)

"Mr. Hitz: We object to it.

"The Court: Have you read this?

"Mr. Hitz: I object to it, anyway.

"The Court: Well, if you proceed after his bracket, it related to a definite legislative purpose. Let me read it:

" 'While Congress does not have the power to deny to citizens the right to believe in, teach or advocate Communism, Fascism and Naziism, it does have the right to focus the spotlight of publicity upon their activities'—

that is the end of his tender, but the sentence continues—

'and to outlaw any organization which is found to be under the control of or subject to the dictation of a foreign government'

[fol. 443] Then it goes on to say that Congress has the right to require such organizations to make periodic reports, and so on.

"That is definitely a legislative purpose.

"Mr. Hitz: Well, we think we have sufficiently proved that the particular inquiry was one within the resolution. We don't feel that we need any further assistance on that.

"The Court: Well, it is 1939. I will sustain the objection, but I should think there would be none made.

"Mr. Pollitt: My offer is the bracketed material.

"The Court: You don't offer what I read in addition to the bracketed material?

"Mr. Pollitt: No, Your Honor.

"The material offered as tender of proof, discussed above, was copied by the reporter and appears below:)

"While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate Communism, Fascism, and Naziism, it does have the right to focus the spotlight of publicity upon their activities . . .

"Mr. Pollitt: The next matter I wish to offer is from a report of the committee, of the Special Committee on Un-[fol. 444] American Activities in 1940, the matter beginning on page 1 and ending with the first period on page 2. The bracket in this one, Your Honor, is misplaced. It starts in the middle of a sentence. I did not intend it to. (Handing up.)

"Mr. Hitz: Have you identified the report by number or such?

"The Court: No. 1476.

"Mr. Pollitt: Oh, and pages 3 and 4 of that report as marked.

"Mr. Hitz: We object to it, Your Honor.

"The Court: It is dated January 3, 1940.

"Mr. Pollitt: Yes, Your Honor.

"The Court: I sustain the objection.

"Mr. Pollitt: I will tender it to the stenographer by way of an offer of proof.

"The Court: You tender what is in the brackets?

"Mr. Pollitt: Yes, Your Honor.

"(The offer of proof, copied by the reporter, was as follows:)

"Investigation of Un-American Propaganda Activities in the United States—January 3, 1940.

"One method which can and should from time to time be used is the method of investigation to inform the American [fol. 445] people of the activities of any such organizations in their nation. This is the real purpose of the House Committee to investigate un-American activities.

• • • • •

"The committee conceives its principal task to have been the revelation of the attempts now being made by extreme groups in this country to deceive the great mass of earnest and devoted American citizens."

Mr. Donner: Thank you very much, Your Honor.

I will now submit from the record in the former trial Defendant's Exhibit No. 5, formerly captioned Defendant's Exhibit No. 8. This appears in the Supreme Court record at page 206 to 211. These are excerpts from statements made in the Congressional Record. And they are covered by the stipulation to the extent that the Government has agreed not to question the accuracy of those excerpts. Is that right?

Mr. Hitz: That is correct.

Mr. Donner: And I offer that exhibit in this case, Your Honor.

The Court: And is this in line with the previous purpose stated?

[fol. 446] Mr. Donner: Yes, Your Honor; for the same purpose.

Mr. Hitz: Our position is the same.

The Court: All right. Let me glance at these.

(Defendant's Exhibit 5, copied by the reporter, was as follows:)

Extracts From the Congressional Record

83 Cong. Rec. 7570 (1938).

Mr. Dies: . . .

I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession. Always we must keep in mind that in any legislative attempt to prevent un-American activities, we might jeopardize fundamental rights far more important than the objective we seek, but when these activities are exposed, when the light of day is brought to bear upon them, we can trust public sentiment in this country to do the rest.

91 Cong. Rec. 275 (1945).

Mr. Rankin: * * *

I serve notice on the un-American elements in this country now that this "grand jury" will be in session to investigate un-American activities at all times.

[fol. 447] 92 Cong. Rec. 3767 (1946).

Mr. Mundt: * * *

The country might as well as be told first as last that our committee is in this fight to expose un-American activities to the finish.

92 Cong. Rec. 5217-5218 (1946).

Mr. Mundt: * * *

Our task—to which you Members of this House assigned us—is to seek out and to expose those activities which although legal are none the less un-American, subversive, and contrary to the American concept.

* * *

It was suggested here by the gentleman from New York (Mr. Klein) that we do not need a committee of this kind because the FBI could do this job. The FBI, however, is limited to the handling of illegal activities, to activities which are in direct violation of the law and to assignments by the Attorney General. As Mr. Davis points out in his letter, there is a field in which our committee must operate, dealing with factors, people, and policies of organizations engaging in actions which are un-American even though their activities are legal. Because of the extreme privilege of free press and free speech they can do much harm if [fol. 448] the nefarious purposes and people lurking behind their high-sounding organizational names remain unexposed.

99 Cong. Rec. 1359 (1953).

Mr. Kearney: * * *

Let me say this to the gentleman that this committee was constituted to seek out communism, no matter where it be, in this country, and that is what we are going to do. We are not going on any witch hunt as some call it, but we are going to investigate its ramifications and bring it to light wherever it may be.

99 Cong. Rec. 1360 (1953).

Mr. Jackson: * * *

We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy.

Mr. Kearney: * * *

We agree with that and we are going to find the Communists in education and elsewhere throughout this country, if this body will go along and give us the funds we need to do the job.

99 Cong. Rec. 1371 (1953).

Mr. Jackson: Mr. Speaker, during the past 3 years, the [fol. 449] Committee on Un-American Activities, of which I am a member, has been conducting an investigation into the extent of Communist infiltration of the Hollywood motion-picture industry. During this period, the committee has exposed several hundred persons who were employed in the motion-picture industry and who were or are members of the Communist Party.

99 Cong. Rec. 1640 (1953).

Mr. Doyle: * * *

Mr. Speaker, this is what the jury in Los Angeles and in these other cities had found these conspiratorial, totali-

tarian, unpatriotic, hypocritical, dangerous, ungrateful citizens to be guilty of. This is the sort of people in our Nation whom I, as a member of the Un-American Activities Committee, am primarily interested in uncovering to the light of day with their dastardly conceived plans against our American freedoms.

99 Cong. Rec. 1820 (1953).

Statement By Representative Clyde Doyle, of California, Member of Armed Services Committee and House Un-American Activities Committee.

• • •

However, the activities of all subversive individuals and groups must be exposed at the earliest possible date to [fol. 450] public knowledge and spotlight.

99 Cong. Rec. 1985 (1953).

Mr. Moulder: • • •

The Committee on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism, and we must not permit baseless propaganda to injure the work of the committee.

99 Cong. Rec. 2019 (1953).

Mr. Jackson: • • •

The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work; to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation.

99 Cong. Rec. 2130 (1953).

Mr. Velde: • • •

The favorable correspondence received contained generally [fol. 451] the following types of statements and issues: No. 1. Demands and requests that an investigation be made of individual Communists in the religious field: To these loyal and sincere citizens, may I say that I feel Communists should and will be ferreted out and reported to the Congress and to the people, wherever they may be found.

100 Cong. Rec. 2284 (1954).

Mr. Velde: • • •

The Congress will certainly recognize that it has given a very broad mandate to the committee to investigate subversive propaganda and activities. I can say with pride that the committee has confined itself well within the limits of this mandate. The committee has investigated individuals and not groups. It has found that these individuals have been in many varied groups and occupations within the United States. The committee has, however, made no study of the various groups which these individuals have infiltrated. There has been no investigation of education, religion, labor, or any other field, but there were individuals named by witnesses before the committee who are associated with these fields.

Even though the Communist Party in the United States [fol. 452] has to a great extent gone underground, the House Committee on Un-American Activities, during the past year, received from witnesses the identification of more than a thousand individuals who had been members of the Communist Party, and again I should like to point out that these identifications have been made public and, with but one exception, none have come forward and denied that they have been members of the Communist Party.

100 Cong. Rec. 2285 (1954).

Mr. Velde:

That is the distinction that I made between it and the FBI. The work of the two is in no way comparable. The Chief point of differences is the fact that the FBI cannot because of the secret nature of its work make any of the information relative to subversion public unless it is in a criminal case, whereas our Committee on Un-American Activities can make public the information that it obtains.

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Mr. Walter: . . .

I think the gentleman is overlooking one very important fact, namely, that the Committee on Un-American Activities has a very large library, and it furnishes to various [fol. 453] Government agencies information that those agencies have not obtained. That is true even of the FBI. So that a large part of the money appropriated to the Committee on Un-American Activities is expended for filing clerks who engaged in the preparation of this very large library.

100 Cong. Rec. 2285 (1954).

Mr. Doyle: . . .

This is no time to economize—not a nickel's worth—in the field of exposing subversive activities wherever they are in my judgment.

100 Cong. Rec. 2286 (1954).

Mr. Doyle: . . .

Furthermore, there is no time like the immediate present to help uncover and expose to the daylight or patriotic American citizens those who continue directly or indirectly as active members or participate in the Communist conspiracy to eventually overthrow the constitutional form of Government of our beloved Nation by force and violence.

100 Cong. Rec. 12257-12258 (1954).

Mr. Gross:

Mr. Chairman, in conclusion I submit the following report [fol. 454] from the House Un-American Activities Committee:

[Information from the files of the Committee on Un-American Activities United States House of Representatives]

May 24, 1954.

For: Honorable H. R. Gross

Subject: Herman F. Reissig

Mr. Hitz: How will 206 to 211 be preserved in the record?

Mr. Donner: Copied out from 206 to 211 of the old record.

And I now offer on the same basis Defendant's Exhibit 6 for identification, the old Defendant's Exhibit No. 9. This consists of statements in the press attributed to Representative Harold H. Velde, former chairman of the House Un-American Activities Committee, and Representative Francis E. Walter, present chairman of the House Un-American Activities Committee. And this offer is covered by the stipulation which states that there will be no objection to its admission on the ground of hearsay or lack of authenticity. And further on, that the Government agrees to its accuracy.

I offer Defendant's Exhibit 6 for identification, which consists of pages 211 to 214 in the old record.

[fol. 455] Mr. Hitz: We have no objection. We take the same position with respect to the first material on exposure as we did before. But I would like a chance to review the stipulation, to see whether we concede its accuracy or whether, as we have done before, we just commit ourselves not to question the accuracy. It is a change of emphasis, but I would like to be sure.

The Court: Can you point it out?

Mr. Donner: I will be delighted to let him see it. Defendant's Exhibit 9 and 9-A. Those are the old exhibits in the Gojack case. I am reading now subparagraph (e) on page 2. With respect to these exhibits your stipulation provides that you will not object to their admission on the ground of hearsay and lack of authenticity. Paragraph (i), below, the Government agrees to the accuracy of Defendant's 9 offered at the previous trial.

That now becomes Defendant's Exhibit 6 in evidence.

The Court: And so that we may keep the record straight: Exhibit 5 is received, and Exhibit 6 is received. I assume you offer it, Mr. Donner?

Mr. Donner: Yes, Your Honor.

Mr. Hitz: Your Honor, in order to save time, I wonder if we could go off the record for just a moment?

The Court: Yes.

[fol. 456] (Thereupon, there ensued an off-the-record discussion, after which the following proceedings were had:)

Mr. Hitz: The Government does not accede and agree to the accuracy of the excerpts.

The Court: All right. I have read those pages, Mr. Donner.

(Defendant's Exhibit 6, copied by the reporter, was as follows:)

Statements in the Press Attributed to Representative Harold H. Velde, Former Chairman of the House Un-American Activities Committee, and Representative Francis E. Walter, Present Chairman of the House Un-American Activities Committee

The New York Times, February 9, 1953

Philadelphia, Feb. 8 (AP)—Representative Harold H. Velde, Republican of Illinois, chairman of the House Un-American Activities Committee, said today "It's a lot better to wrongly accuse one person of being a Communist than to allow so many to get away with such Communist

acts as those that have brought us to the brink of World War III."

The New York Times, February 12, 1953

Washington, Feb. 11—The Senate group, Mr. Velde said, [fol. 457] is searching for "organized" communistic activity in the educational system and dealing with institutions. His committee will continue to concentrate upon "individual members of the Communist party who in the past and possibly at the present time, are engaged in the field of education."

New York Times 1953, February 19, 1953, Page 10

Washington, February 18.— * * * He also announced that despite "scattered" protests by educators, college administrators generally had cooperated. He insisted the committee was not investigating education but was interested only in "tracking down individual communists in the education field."

The New York Times, Thursday, February 26, 1953, Page 16

Washington, February 25.— * * * The House Committee, headed by Representative Harold H. Velde, Republican of Illinois, appeared to be highly conscious of criticism in it. In an opening statement, Mr. Velde insisted that the investigation was no different from preceding inquiries into labor unions and other areas. He emphasized that the committee was not seeking to investigate institutions as such, but to ferret out communists operating within them.

[fol. 458] The New York Times, Friday, March 13, 1953—12:5

Washington, March 12— * * * In confirming the committee's action, Mr. Velde declared:

"I never did propose an investigation of the clergy nor did I propose an investigation of churches. We are interested in investigating individual Communists—whether they be found in education, in labor, in the clergy or in the legal profession."

The New York Times, Friday, March 20, 1953—11:3 at 4

Mr. Velde * * * referred also to another controversial inquiry, that of communism in schools, and said he was not investigation the institutions but individual members of their faculty.

The New York Times, Saturday, July 4, 1953—1:6 at 4:7

Representative Velde, the committee chairman, was non-committal on this development, which had been viewed in some Congressional quarters as the start of an inquiry such as Mr. Velde had said was "a possibility," although he had insisted that he meant no investigation of churches or religions.

Asked what his position was, Mr. Velde said: "We are seeking the identification of Communists, former Communists and those who now sympathize with communism or have in the past, regardless of the field in which they [fol. 459] operate."

The New York Times, Wednesday, July 8, 1953—13:1 at 2

Mr. Clardy said the committee was not investigating or attacking the clergy or the churches or religion but was trying to expose Communists in any field, "whether in the clergy or in my own [the law] or any other group."

The New York Times, Thursday, October 29, 1953—22:4

Washington, Oct. 28— * * * Representative Harold V. Velde, Republican of Illinois, who heads the committee, said the hearings scheduled for Nov. 16 and 17 would "deal exclusively with individual teachers in the Philadelphia area who have been identified as present or past members of the Communist Party."

The New York Times, Thursday, January 28, 1954—1:4 at 16:5

The House Un-American Activities Committee moved into the picture this afternoon. Its chairman Harold H. Velde, Illinois Republican, suggested that the V.F.W. supply names of suspected Communists to the committee as well as to the F.B.I.

"We welcome the cooperation of such patriotic organizations," he declared.

The New York Times, Sunday, February 7, 1954. 16:6

Washington, Feb. 6 (AP)—The House Un-American [fol. 460] Activities Committee said today it had deleted the Consumers' Union from the list of organizations it described as subversive.

It invited other organizations to take steps similar to those it said were taken by the Consumers' Union to obtain clearance. It did not state what the steps were.

The committee devoted a part of its annual report to the Consumers' Union. The organization publishes Consumer Reports which carries articles on the quality of products for the guidance of buyers.

The committee said it cited the Consumers' Union in 1944 on the basis of information in committee records. It said the organization initiated steps "to clarify the situation."

The Washington Daily News, Friday, November 19, 1954.

John Q. Will be Invited to Hearings

Rep. Francis E. Walter (D., Pa.), who will take charge in the new Congress of House activities against communists and their sympathizers, has a new plan for driving Reds out of important industries.

He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a [fol. 461] chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

By this means, he said, active communists will be exposed before their neighbors and fellow workers, "and I have every confidence that the loyal Americans who work with them will do the rest of the job."

Invite Public

Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"We will force these people we known to be communists to appear by the power of subpoena," Rep. Walter said, "and will demonstrate to their fellow workers that they are part of a foreign conspiracy."

Mr. Rein: I would like to offer now and read from the Supreme Court record evidence in the Silber case, that evidence by Professor Emerson. I understand from Mr. Hitz that although he does not concede that this evidence is in any way material, or even that Professor Emerson is an expert, or that anything that Professor Emerson says should influence Your Honor, or any courts in this matter, he has no objection at all to my reading the testimony to Your Honor on the ground that Professor Emerson is not actually here.

[fol. 462] The Court: I must say honestly to you that my experience with the question of the use of expert testimony is probably best exemplified in connection with a case involving the Carlton Hotel at Sixteenth and K Street, southeast corner. Our Court of Appeals indicated matters of this sort were not properly the subject of expert opinion, it was a function of the jury; and hence I would say when the Court is sitting without the aid of a jury it would be the Court's function. But I am not saying that in opposition to what you and Mr. Hitz have worked out. That is my understanding of what the law is. But you are not asking me that.

Mr. Rein: I am asking to present it to you. I would ask Your Honor to rule on it and either receive it or reject it.

I have indicated what the nature of the testimony is. I have indicated Mr. Hitz has no objection to my presenting it in this form, without Professor Emerson actually being here. And he has no objection to my presenting it from the record. I do not wish to concede that Mr. Hitz thinks that Your Honor should receive the evidence. Certainly his confession does not go that far.

Mr. Hitz: First, we have no objection to the procedure that has been followed by Mr. Rein in bringing this material in the form of Doctor Emerson's testimony in another case to this Court's attention in order to offer it in evidence. [fol. 463] I may say, too, that I feel that, from the past history of cases of this sort, it would be lacking in discretion if the Government should urge that this material in this case be excluded, despite the position that has been taken before in similar cases. Therefore, our position is that we do not oppose it. However, we do have certain reservations with respect to it, which we should express here because they have legal consequence, in view of the fact that it involves the suggested offer of expert testimony. These reservations that we have with respect to it are the subject of a stipulation that has been entered into with defense counsel, and it is documented in the letter of offer of stipulation of Mr. Rein to me of April 30, which is Exhibit 14 in this case. And it is No. 2(g). And I will read 2(g) to the Court so that it may likewise be in this place in the record.

Defendant may offer in evidence the testimony of Thomas I. Emerson as it is reproduced in the transcript of the record in the Supreme Court in the case of *Silver v. United States*, No. 454, October Term, 1961, at pp. 97-118. It is further understood that with respect to this item the government does not concede that the matters to which the witness addressed himself were ones where expert testimony is [fol. 464] permissible and it does not concede that the witness is qualified in this or in any field. The government does not concede the accuracy or the validity of any testimony of fact, conclusion or opinion, which may be stated therein.

That is our stipulation. And those are the reservations with which we state to the Court that we do not feel that we should object to this being considered by the Court, for what it is worth.

The Court: I don't follow you. After you got through, I didn't think there was anything left.

Mr. Hitz: We don't think there is. But we don't feel that—

The Court: Let me interrupt you, Mr. Hitz. If I understand what you have read about the stipulation, all you are saying is that you are making no point that Professor Emerson is not physically present, and that if he were permitted to testify he would testify to X, Y, Z.

Mr. Hitz: That is correct.

The Court: You are not conceding the accuracy of any of these things.

Mr. Hitz: That is right.

The Court: And that is as far as you have gone.

Mr. Hitz: We are not conceding his expertise. And we [fol. 465] are not conceding that he is testifying in a field in which expert testimony should be considered.

The Court: It is implicit in what you say, and that you therefore do object to the entry of this even if he were here.

Mr. Hitz: No, we are not going to object to it. We don't feel that the safe trial of this case should exclude this testimony. We are not objecting to it. But we are trying to indicate to the Court and to the record that we certainly don't consider him to be an expert. We don't consider that he would have testified in a field in which expert testimony is received. What there may be left when we get through with our reservations is open to considerable doubt. That is one reason why we make the reservations. But the record still is that we don't object to it. We are trying to cut it down to where we think it should stand, if it has any feet to stand on, and we think it doesn't.

The Court: I honestly do not follow you. In essence, are you saying that you are not objecting to this proffer on any technical ground or other ground, but you are saying that even if it were to be received, it would not be that of an expert?

Mr. Hitz: Yes; that is right.

The Court: And similarly, you are not conceding that [fol. 466] it is in a field in which an expert would be appropriate?

Mr. Hitz: That is right.

The Court: So what do we have?

Mr. Hitz: Well, if he were here I would object to the field as being not subject to expertise. That is number one. And that what he says is not conceded by the Government to be factually true, nor his opinions to be valid. Nevertheless, we would not urge the Court to exclude it. In effect, it is that we don't see any value to it, and we state that position. But nevertheless we don't—

The Court: Are you saying you see no probative value to it?

Mr. Hitz: That is part of it. We see no relevancy to it. We see no probative value to it, if relevancy were even found by the Court. And we also object that he is not an expert and that it is not subject to expert testimony anyway.

The Court: I think you might make your record clear by saying you are making a proffer. There is no objection to the proffer as such. I will hold it to be inadmissible because I think it is in a field in which experts have no right to testify. And I feel that I am bound by certain pronouncements of the Appellate Courts, one of which em-[fol. 467] braces now, I think, a situation at Carlton Hotel here at Sixteenth and K Street.

Now you want to get what your proffer is on the record?

Mr. Rein: That is correct. Pages from the Silber v. United States, No. 454, October Term, 1961. It begins at the bottom of page 97 of that record, with the heading "Offer of Proof, Thomas I. Emerson," and will continue from there through page 118.

(The material mentioned is copied into the record by the reporter, as follows:)

Offer of Proof

THOMAS I. EMERSON,

a witness on behalf of the defendant, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Rabinowitz:

Q. Professor Emerson, what is your occupation?

A. I am a professor of law at Yale Law School, Yale University.

Q. How long have you held that position.

A. Since 1946.

[fol. 468] Q. What is the extent of your formal education?

A. I graduated from Yale College in 1928, and from Yale Law School in 1931.

Q. Are you a member of the bar?

A. I am a member of the bar of the State of New York, and also of the United States Supreme Court.

Q. Will you state for the Court your employment experience prior to your appointment to the Yale faculty?

A. When I first left law school in 1931, I was employed by the New York firm of Engelhard, Pollak, Pitcher and Stern. I worked for Walter H. Pollak in that firm. He was well known as an attorney handling civil liberties problems, and I did some work with him on civil liberties problems at that time. As a matter of fact, the first case I worked on after getting out of law school was the Scottsboro case, which was well known in the "30's" as a civil liberties case.

After two years in New York, I went to Washington, and had positions in the federal government for thirteen years, until 1946, when I went to Yale.

My first position was an assistant counsel in the National Recovery Administration. I was assigned as counsel for one of the four divisions of the legal division. Our division gave legal counsel and advice with respect to those N.R.A.

[fol. 469] codes which related to the textile industry, the garment industry, the distribution trades, and finance.

After about a year with the N.R.A., I transferred to the first National Labor Relations Board. This was in August, of 1932, and I—

Q. Excuse me; you said August, 1932.

A. 1934, pardon me. I was on the legal staff of the first National Labor Relations Board, and then the successor Board, which is now the present National Labor Relations Board, until the middle of 1936.

I then transferred to the Social Security Board, where my title was Principal Attorney, and I was in charge of the legislative amendments and matters of drafting new legislation for the Social Security Board. I was at that board for a year.

In the middle of 1937 I transferred back to the National Labor Relations Board. I became Assistant General Counsel and later Associate General Counsel of the National Labor Relations Board. My function was as head of the review division of the Board, which assisted the members of the Board in the preparation of their decisions.

[fol. 470] In December, of 1940, I resigned from the National Labor Relations Board, and shortly thereafter I became Special Assistant to the Attorney General in the Department of Justice. I was assigned to what was then the Assistant Solicitor General's office, and remained there for approximately six months.

In June or July, of 1941, I became Assistant General Counsel of the Office of Price Administration. I remained—pardon me, I became Associate General Counsel of the Office of Price Administration. I remained in that position for a year, or approximately more, and then my title was changed to—it was actually a new position—Deputy Administrator, in charge of enforcement for the Office of Price Administration.

In August, of 1944, I became General Counsel of the Office of Economic Stabilization. I remained in that position for a year.

I then moved up to become General Counsel of War Mobilization and Reconversion in August, of 1945.

I resigned from the government to accept the appointment at Yale in 1946, and actually began work at Yale in September, of 1946.

Q. Now, in your almost fourteen years at Yale, what has been the major field of your teaching work?

[fol. 471] A. My major field of research and teaching has been the public law field. I have taught courses in constitutional law, administrative law, legislative process, and similar areas in the public field.

Within that general area of public law, I have concentrated on political and civil rights. I have done most of my research and writing in the field of political and civil rights, and I have taught a course in that field since the fall of 1947.

Q. Have you done any writing in that field which has been published?

A. Yes; I am co-author with Professor David Haber, now of Rutgers University Law School, of a book entitled Political and Civil Rights in the United States. This is a book of cases, other materials, comments, and references dealing with the subject of political and civil rights in the United States. It was first published in 1952, and a second edition was published in two volumes in 1958.

I have also written a number of articles for legal periodicals in the field, as well as book reviews and popular articles.

Q. Do you keep a continuing file on the subject of political and civil rights?

A. Yes. Since my coming to Yale I have maintained a rather extensive file of clippings, articles from periodicals, [fol. 472] reports, pamphlets, (222) briefs, books, and so forth. I use this file rather extensively in my research and teaching in the field, and keep it up to date.

Q. Have you done any work abroad in connection with your study of political and civil rights?

A. Yes, in 1953 to 1954, during that academic year, I was awarded a Guggenheim fellowship for the purpose of studying civil liberties in Great Britain. I went to London, where I was a visiting professor at the London School of Economics for that academic year. I taught a course there in American constitutional law, and participated in a course on administrative law, but most of the time I was engaged in the study of civil liberties in Great Britain, particularly related to the loyalty security program of the government, and the various methods by which the government, labor unions, political parties, and others, dealt with the Communist problem.

Q. While you were in England, did you do any public speaking on this subject?

A. Yes; I gave a public lecture at the University of London on the subject of legislative investigating committees. And I also made an address over the British Broadcasting Company network on the same subject.

[fol. 473] Q. Have you received any other fellowships?

A. Recently I received a fellowship from the Ford Foundation for the next academic year. This fellowship is for the purpose of studying the legal foundations of the right of political expression.

Q. Can you describe, briefly, the nature of the work you do at Yale, with specific reference to the contacts you have, outside the formal teaching contact with students, and other faculty members at Yale, if they exist elsewhere?

A. Well, in addition to the classwork, the political and civil rights course requires that each of the students taking the course must prepare a paper dealing with some subject of civil liberties. In other courses, also, papers are required. And I work rather closely with students in the supervision of these writing projects.

There are other faculty members, of course, on the Yale faculty, who are interested in the same fields, and we constantly discuss these problems.

I also lecture, have given lectures both at Yale and the New Haven community, and at other places, on various aspects of civil liberties.

[fol. 474] Q. Have those other places included other academic communities?

A. Yes; I have lectured at Harvard, Princeton, Columbia, Bard College, Sarah Lawrence, and various other institutions. Those lectures, I should say, were not always sponsored by the college itself, but some of them were sponsored by student groups or other organizations within the college.

Q. In the course of your work in this field, have you familiarized yourself with the activities of the House Committee on Un-American Activities and with its techniques and investigations?

A. Yes, I have concerned myself a good deal with the Committee on Un-American Activities.

Q. I feel that this question is anticlimactic but I assume you are familiar with the decision in the Barenblatt case?

A. Yes, I am.

Q. I would like specifically to call your attention to that portion of the Barenblatt case which appears at Page 16 of the pamphlet opinion and discusses what the court calls the issue of a balancing by the court of competing private and public interests at stake in the particular circumstances shown.

Q. Have you an opinion as to the various factual considerations [fol. 475] which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?

A. I will address myself first to the question of the Government's interest in obtaining answers to questions as an aid in framing legislation to protect internal security.

It is important, I think, at the outset to define rather carefully what that interest of the Government is. It is an interest in seeking information with respect to legislation that will protect against overthrow of the Government by force and violence. The Government does not have a

legitimate interest in legislation directed against unpopular ideas or unorthodox beliefs or activities designed to change institutions by peaceful and democratic methods. Hence the Government's interest is one in laws such as those dealing with treason, sabotage, espionage, or various forms of the use of force or violence. And it also, of course, has an interest in legislation designed to deal with preparation or attempts for such conduct, but not with the suppression of legitimate political activities.

[fol. 476] Now, as to the considerations which, in my opinion, bear upon the weight to be given this interest of the Government, I first call attention to the laws already on the books and existing at the time of the hearing in 1958 dealing with matters of internal security. There were at that time laws pertaining to treason, insurrection and rebellion, seditious conspiracy, espionage, and sabotage. There was also the Smith Act, which prohibited advocacy of overthrow of the Government by force and violence, or the forming of organizations to do that.

A very important piece of legislation on the books at this time was the Internal Security Act. In Section 4(a) of the Internal Security Act it is an offense to agree to do any act which substantially contributes to the establishment of a totalitarian dictatorship in the United States.

The Internal Security Act also includes provisions for registration of Communist action and Communist front organizations.

And a third major portion of the Internal Security Act provides detention camps for use in the event of emergency to incarcerate people whom the Attorney General [fol. 477] has reason to believe may engage in espionage or sabotage.

There is also the Communist Control Act which, in Section 4, denies to the Communist Party the rights, privileges, and immunities attendant upon legal entities, and in Section 5 makes it unlawful for a person to be a member of the Communist Party, knowing the objectives thereof.

The Communist Control Act also contained provisions which deal with the question of labor. It amended the registration provisions of the Internal Security Act to include a provision that organizations which were infiltrated by members of the Communist Party would be denied certain rights under the National Labor Relations Act.

In addition to this legislation, there is a mass of legislation and administrative regulation dealing with the problem of loyalty security. Those loyalty security programs cover not only all employees in the federal government, but also all employees in industry who have access to classified materials.

There are a number of additional programs, including that covering dealing with port security, covering maritime workers, and programs such as that in the Aid of Education Act, which requires a loyalty oath from students accepting scholarship aid furnished by the Federal government.

Likewise, among the statutes that have to be taken into account here is the Taft-Hartley Act. As the Taft-Hartley Act existed in 1958, it contained a provision requiring all officers of labor organizations to file a non-Communist affidavit if the organization was to obtain the benefits of the National Labor Relations Act. That has since been amended, but I take it that the amendment is not relevant. The amendment makes it unlawful for a union with officers who have been Communists for the past five years to obtain the benefits of the National Labor Relations Act.

There are other statutes, including those relating to aliens, and there are, of course, a mass of state and local statutes dealing with this issue.

Thus the interest of the Government in obtaining answers to these questions must be weighed in and related to this large mass of legislation dealing with these problems already in existence.

Secondly, any consideration of the Government's interest in obtaining an answer to these questions, in my opinion, must also consider the economic, political, and social con-

[fol. 479] ditions in the country at the time, so far as they pertain to the issue of whether there was any danger or threat to internal security. This, in my judgment, would have to take into account that from an economic point of view the country was in a period of almost unparalleled prosperity, that production was high, employment was high, and wages and income were all at peak levels. The standard of living in the country during that period was also at an unusually high level. Certainly there was no indication on the part of the Government or of experts that there was any likelihood of economic collapse or depression, and there were many measures designed to avoid such an economic condition.

With respect to political factors, the situation is, or was at that time, and still is, that there is no significant political opposition to the major parties in this country. There are no radical political movements of consequence, with any large membership or support. As a matter of fact, there are relatively few even protest groups at the present time. There is little support for radical ideology of either a Socialist or Communist nature. In other words, the conditions which would be required for any possibility of danger to internal security were not present politically. It would [fol. 480] politically be most unlikely that there would be any danger to national security unless the police force, federal, state, and local, were shown to be infiltrated, or in sympathy with, or at least indifferent to, a radical movement proposing the use of force and violence. In addition, it would require that the military be in support, or at least neutral, and it could only constitute a threat to internal security if there were widespread public opposition to the Government, considerable bitterness, hopelessness, a feeling or conviction that existing institutions were inadequate to deal with the problems the country faced. None of those conditions existed. As a matter of fact, the strength of American political institutions was, I think recognized by all. It had been demonstrated in two wars and a devastating depression, and continued amid considerable unrest

in other countries. Those political institutions had proven themselves flexible to deal with the wars and depression, and the general feeling certainly was that they were flexible and adequate to deal with problems then existing.

So far as social conditions were concerned pertaining to internal security, there was no serious social unrest of any [fol. 481] kind in the country. On the contrary, there was general acceptance of the social system; certainly no inclination on the part of anyone to use force or violence to solve social problems.

The only possible areas of disaffection that one might point out would be the farmers, who were suffering somewhat economically. That, however, would not seem to be a serious problem. Farmers are notoriously conservative and certainly not of a mind to use methods of force and violence for overthrow of the Government. Farmers have used force and violence on occasion, but that has been local in effect. It is unlikely that any general threat would arise from that course.

Negroes in the south might be considered another source of social disaffection, but they had given every indication of solving their problems through legal methods, as well as through peaceful methods, or passive methods.

Certain white groups in the south might also be considered disaffected, perhaps. They have resorted to force and violence on occasion, but that has been of a local nature, not one which seriously threatened the national security.

Thirdly, one must take into account, in appraising the [fol. 482] Government's interest here, the strength of the Communist Party, the organization movement against which the legislation was presumably directed.

In 1958 the Communist Party membership was at the lowest ebb in many years. According to the F.B.I. figures, it had been in 1952 31,000, and in 1956 it had dropped to 20,000. The F.B.I. does not appear to have issued figures after 1956, but it is clear that by 1958, when the Communist Party had felt the repercussions of both the revelations with regard to Stalin and the Hungarian revolution,

that its membership was considerably below 20,000. In 1958 it was undoubtedly less than 10,000 perhaps 5,000.

In terms of political strength, the Communist Party had not been on the ballot since 1940, at which time it obtained 49,102 votes throughout the country. No member of the Senate, no member of the House of Representatives, no member of any state legislature, no mayor, or member of a city council, so far as I am aware, was a member of the Communist Party.

With respect to positions of influence in the country, I take it that it would be accepted by everyone that the Communist influence was not felt in the federal judiciary or in the state judiciary.

[fol. 483] With respect to the federal executive branch of the government, the Hatch Act had since 1939 prohibited Government employees from being members of organizations which advocated overthrow of the Government by force and violence, and which had been interpreted to apply to the Communist Party by the Civil Service Commission. In addition, an elaborate series of executive orders, including the one issued by President Truman in March, of 1947, and the one issued by President Eisenhower in April, of 1953, established broad programs for checking the loyalty of Government employees. And President Eisenhower and Attorney General Brownell, as far back as December, 1953, had stated that there were no further Communists in the federal government.

There were three investigations by congressional committees in 1955 with respect to this question, and the evidence there all disclosed no members of the Communist Party or Communist influence in Government service.

State and local governments were subject to loyalty programs of a similar although not always perhaps as intensive a nature, and there is no evidence that any Communist influence existed in state or local government.

[fol. 484] In industry, I know of no evidence that there was Communist penetration of any significance. The same is true of agriculture.

With respect to labor, there is evidence that there was Communist influence in some unions in the period after the war, but that now appears to be very small. The Taft-Hartley Act, passed in 1947, required that all union officers file a non-Communist affidavit, and most all of the union officers did that. In addition, there was action by the unions themselves. Three of the unions that were claimed to be subject to left wing influence changed their leadership, and ten others were expelled by the C.I.O. in 1949 and 1950. The C.I.O. also set up rival unions to take over the organization of employees in those areas. By 1951 Mr. J. Edgar Hoover, chief of the F.B.I., complimented the labor movement upon the excellent job it had done in cleaning out Communist influence:

The situation today I would say is that those unions remaining which have anything which can be claimed to be left wing leadership include less than one per cent—the unions generally. I would say also that the influence is in the leadership, not in the rank and file, and in any event [fol. 485] those unions have confined themselves to union matters, and not to political matters. There is no evidence, that I know of, of substantial Communist influence in the steel union. Generally speaking, the labor movement has been a relatively conservative force in American society today.

Other areas in which it has been claimed that Communists exercise positions of influence are the communications industries, but I think that claim is no longer made and was not made by 1958. In any event, there was no evidence, even if there were isolated Communists in the communications industries, that they influenced the product.

With respect to religious institutions, there have been some assertions recently that Communist influence was of some significance there, but I think that, despite the position of the Committee on Un-American Activities on that issue, most students of the problem would say that there is no significant Communist influence in religion or religious institutions.

With respect to educational institutions, my judgment would be that Communist influence is about zero at the present time. Virtually all universities have announced the policy that they will not permit members of the Com-[fol. 486] munist Party on their faculties. The secondary and elementary school systems are in almost all states governed by loyalty programs for teachers which exclude Communists and go beyond that. The various educational associations, including the National Educational Association, have, with the exception of the American Association of University Professors, taken the position that the Communists should not be allowed to teach. A recent study by Iversen of Communist influence in education supports this view.

Finally, with respect to Negroes, the Negro community, the House Committee on Un-American Activities has itself stated that there is no substantial evidence of Communist infiltration or influence there, and this is supported by studies published in 1951 by Professor Wilson Record and Professor William Nolan of Communist influence in the Negro community.

In addition, with respect to the strength of the Communist Party, the F.B.I. has consistently stated that it maintains surveillance over members of the Communist Party and follows their activities.

There have been statements that although the Communist Party membership may be low there are a number of fellow travelers for each hard core Communist and that [fol. 487] this may present a problem. There is certainly no evidence as to the number of persons who might be included in that indefinite category of fellow travelers, but even if there were, it is quite clear that persons in such position are not ready in any sense to deal in matters of force and violence. Whatever support they may give to positions which the Communist Party also supports is entirely within the democratic framework.

Now, fourthly, as to the Government's interest, in my judgment there must also be considered, in weighing the

interest of the Government in obtaining information for further legislation, the factor of the control of Communist influence in the labor movement by the labor movement itself. I have already referred to some facts with regard to this, and I will just add certain additional ones.

The American Federation of Labor-Congress of Industrial Organizations' constitution contains provisions directed toward preventing Communist influence in labor unions that are affiliated with that organization. In addition, the AFL-CIO has promulgated a code of ethical practices with respect to racketeers, crooks, Communists, and Fascists, which requires that affiliated unions insure, [fol. 488] through their constitutional and administrative measures, that no one representing Communist influence hold office or influence policy.

In addition, it should be pointed out that forty unions have constitutions which make Communist Party members ineligible for membership in the union, those unions representing six million employees. There are fifty-nine union constitutions which make Communist Party members ineligible for holding office, those unions representing ten million employees.

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Q. Will you proceed, Professor Emerson?

A. There are only two further matters that I wish to point out in connection with the considerations which go into account as to Government's interest.

Finally, I point out that it would be possible for the Committee to obtain substantial information on the basis of voluntary testimony—as a matter of fact, most of its information that it has obtained has come from voluntary sources—and that therefore the necessity of recourse to compulsory testimony becomes less significant.

That concludes my statement of the considerations that must be taken into account with respect to the Government's interest.

I now turn to the other side of the scales and consider the interest of the individual in freedom of speech and the interest of society in freedom of speech.

Let me first point out, with respect to these interests, the nature of the interest involved.

First, as to the interest of the individual: First of all is the interest of the individual in his right of expression. He, as a person, as an individual, as a human being, has a right to realize himself by expressing his views, his ideas. Such freedom of expression is essential to individual integrity and dignity and the right to develop and realize one's potentialities. This as the primary basis of the individual's interest has I think been recognized by all writers who have commented on the right of political expression. One finds it originally in Milton, and also given expression by Jefferson, Mill, Professor Chaffee, Justices Holmes and Brandeis, and many others.

This significance of individual expression has been, I think, confirmed by psychological and sociological findings in recent years, embodied in the writings of such persons as Erich Fromm, Rollo May, David Reisman, and others. These writers deal with a major problem of contemporary [fol. 490] society, perhaps the basic problem, what they call the problem of alienation, that man in modern society feels a stranger to his community; that he doesn't really feel himself a part of society, and that he is controlled by impersonal forces; that this feeling is the basis of the malaise of the present civilization.

It seems to me that the implication of this is that in order for a man to be an integrated, healthy, mature person, he must be free to express himself, and to live his own life, and I think these psychological findings support that basic right of individual expression.

Again, the individual has also a right of silence, a right not to be forced to speak. This was a right which was recognized in the classic flag salute case. It has been discussed by Justice Brandeis as a right of privacy. It is a right that is essential to human dignity, the right, again, to live one's own life. And I think that this right of silence, the right not to be forced to state one's beliefs, opinions, or associations, is particularly important in modern society

when so many pressures tend toward conformity, and the individual finds it much more difficult, in view of the deprivations against unorthodoxy, to maintain his own independent existence.

Finally, with respect to the interest of the individual, it involves also the right of association, the right to associate with others. This was a right which was won more gradually than other parts of the right of free expression, but I think is now generally recognized. It is based on the weakness of the individual as a single person to accomplish political or social change and the importance of an organization in which he can participate. In a sense, the right of association is complementary, one might say, to the right of silence. A man must both live alone and live with others.

Now, as to the nature of the interest of society in freedom of political expression, society's interest in free expression is a basic and absolutely fundamental principle of the democratic process. It rests upon the whole basis of our democratic institutions, namely, that the people are the sovereign power in our form of government; that the Government and its members are servants of the people, who have and continue the sovereign power. It is therefore the people who make decisions through the Government, and the Government that carries them out, but the ultimate [fol. 492] right of decision rests with the people of the country as a whole.

If this be accepted, and it is commonplace as our view of our democratic society, it is then essential to have full discussion of all matters on which the people may be called upon to make judgment, and this right includes not only the right to speak ones self, but also the right to hear the views of others. The only alternative to a system of full and open discussion of this sort is a system of resolving questions by force. That of course is not part of our democratic system.

Not only is the right of expression a fundamental part of a democratic society, but it is also, as Mill particularly has pointed out, necessary to a healthy functioning of so-

ciety. Every society, as he indicated, requires criticism, requires opposition, requires challenge, to its most basic assumptions, as well as to matters which are more on the surface. Otherwise in a society, the reasons for certain positions, even if those reasons are correct, become less sharp, and become forgotten, so that we accept our principles and our way of doing things purely because it has been done in the past, without knowing or understanding [fol. 493] the basis on which we act. Such a society becomes very vulnerable to change and inflexible, unable to adapt itself to changes. It is therefore necessary to have the fullest and most open kind of expression.

This is, then, the nature of the interest on the other side of the scales.

I turn now to considerations which should be balanced, which should be taken into account, in appraising that interest. This deals mainly with the impact of committee investigations of political ideas, beliefs, associations, and activities, the impact of such investigations on the right of the individual and the right of society to free expression.

The effect on the individual, as I think is now well recognized, is most serious. The harassment of calling an individual before an official body, such as a committee, and putting questions to him, often in a hostile way, certainly is an experience which many people do not wish to undergo, and the mere process of calling and questioning, particularly, as is true in this case and in many other cases, where the questions are with respect to ideas or activities that are exceedingly unpopular, the impact of that is a very serious one on the individual's willingness to express himself.

[fol. 494] There are also most important economic repercussions on witnesses who have been called before committees. Many industries have policies of discharging persons who do not act in certain ways before legislative committees. It may be that a career in a profession or an academic career is not possible after a committee has extracted material with respect to one's political beliefs or

associations. Certainly one's political influence declines. No one listens to what a person says who has been branded by the Committee as a member of the Communist Party or influenced by Communist ideology.

There is also social stigma. One gets telephone calls at night, and one's friends avoid one in the situations, all of which means that the Committee exercises a tremendous impact upon any individual who is forced to reveal, over his objection, his political ideas or associations.

It is, furthermore, not only the impact on the individual who is called before the committee that is important, but the impact upon others. Perhaps this is even more important, because there are many more others, and because the others are less likely to be of the same temper as those [fol. 495] who were sought out by the committee, that is to say, they are perhaps more timid or uncertain about expressing themselves or engaging in political activity? In any event, the impact spreads throughout the whole country and throughout the whole area of political activity and association.

One particularly important aspect of this is the effect on the right of association. Persons become fearful of joining associations which may later be attacked by a legislative committee. They become fearful of joining associations which may have in them people who will be subject to attack by a legislative committee. And consequently, since one cannot tell in advance what positions an organization will take, or what members it may have, the only recourse is to avoid joining organizations altogether, and this tends to be one strong impact of the committee, that it sharply curtails freedom of association.

It should be emphasized, also, that it is impossible to confine the impact of the Committee to the Communist Party or to matters closely or entirely related to the Communist Party. The Committee does not and cannot really draw a hard and fast line between Communist Party Activi- [fol. 496] ties and other activities which look as though they might be Communist Party activities or other activi-

ties which may coincide with Communist Party activities. There is swept into the net the whole area left of center, one might say, and it all becomes smeared, as it were, with the same color, although it may not be what the Committee claims it is after. Such a blurring of lines is inevitable in any administrative organization, and the Committee has become a fairly large administrative organization, with its staff. The whole dynamics of an operation of this sort means that the impact spreads far beyond the members of the Communist Party. One might say that they are perhaps least affected, in terms of their freedom of association.

I can illustrate these matters by various examples, but I mention only one or two, things of which I have some personal knowledge. One is the impact on students at a university of the activities of legislative investigating committees into political beliefs and associations. My experience has been that students are quite concerned about joining organizations or committing themselves to matters which have been or may later come under attack by committees. They are interested in those problems, but not inclined to be active or committed to their solution.

[fol. 497] For instance, in my classes, both in constitutional law, in connection with the *Konigsberg* case, and in political and civil rights, there has been discussion as to whether members of the Communist Party should be allowed to be members of the bar. I know from the discussion in class, which I think is reasonably open, what the views of the various members of the class on this may be. The majority of them, rather large majority, have at least stated the position, and I think it is their correct position, that whether a lawyer is a member of the bar should not depend upon whether he is a member of the Communist Party but upon the qualifications, the merits. When, however, the students were called before the character committee for admission to the bar, they were asked the question, in many instances, as to whether or not they believed a member of the Communist Party should be a

member of the bar. Many of them, contrary to the view that they had expressed privately, expressed the view that a Communist should not be admitted to the bar. That I think is an indication of the most unfortunate consequences of an attitude for which I think the legislative committees are very largely responsible.

[fol. 498] It seems to be a very poor way for a person to enter the legal profession, by being forced to conceal his views on peril of knowing that he will be in difficulties if he does not. And it is that kind of an impact, as well as the impact of being noncommitted and unwilling to participate in the solution of significant problems that I think is quite widespread as the result of inquisitions, or investigations, pardon me, of legislative committees.

I find a very similar feeling in organizations dealing with foreign policy. There are very few, if any, organizations which express a point of view different to the official American State Department view on foreign policy. It is inconceivable to me that there aren't many people who don't agree with our foreign policy, but that does not reflect itself in organizations. And those that I have come in contact with have been particularly concerned about who else might be in the organization or whether it should take a position at all on these matters for fear that its individuals will be harassed and its whole usefulness destroyed by a public investigation.

I will add only one other consideration here with respect to the factors to be taken into account in this balance, and [fol. 499] that is, in my opinion, the general balance today between forces pressing toward an open society and those toward a closed society is very much in favor of the latter, generally speaking; that is to say, I think the forces in our society which tend to be restrictive and to suppress independent thinking and activity are greater than those which would encourage independent activity.

In the Government, for instance, not only has the Government taken over regulation of economic and other matters on a very extensive scale, but its loyalty programs have

been very extensive and very repressive in their way. It has been estimated that there are in the neighborhood of twelve million persons in the country that are subject to loyalty tests, and that is a constantly moving number, because that is the number at any one time, and that number does not also include the families and dependents of such persons.

The economic organization of our society presses in this direction, too; the large units which leave no room for individuals, mass production methods; similarly, the mass media, the newspapers, radio, television, pound out the same message to us on a rather low level. Educational institutions which should be the ones to counteract to the [fol. 500] largest extent this pressure toward conformity do not always do that. They are much too restricted. They fail to deal with controversial issues. The courses teaching socialist or Marxist theory, which is held by a great many people in the world, are few and far between.

In short, it seems to me that as of this time what is needed, in terms of freedom of expression, is that society encourage independence, unorthodoxy, and differences. I think it is essential, if society is to meet the challenges of today and to adjust itself to the rapid changes which are taking place. So that from an overall point of view, it would be important that the courts not take any action which will discourage, rather than encourage, forces for an open society.

Q. Professor Emerson, in your opinion, in view of the facts that you have stated, in whose favor should the balance be struck between the various interests here at stake?

A. My answer is, on the basis of the foregoing considerations, it is my opinion that the interest of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interest [fol. 501] of the individual in freedom of speech or silence, as he may prefer, and by the interest of the community

in maintaining freedom of political expression and other conditions essential to maintaining an open society.

Mr. Rein: Except for whatever may develop as a result of Mr. Hitz' response to our request for production of minutes, we have no further evidence. I think perhaps we can anticipate what his response is. Aside from that, that would be our case.

The Court: Are you in a position now to state what the result of what you did at the instance of Mr. Rein?

Mr. Hitz: No; I was unable to get the person whose response I wanted to rely upon. I think I could, if we had a recess.

The Court: We will.

Mr. Hitz: I wonder if the Court would consider me not presumptuous if I asked the Court, and I make this motion, to reconsider the Court's position excluding that last testimony? And if necessary, I was going to say the Government could change its position. But we didn't object to it. I can't do much more than not object. But I actually feel that, realizing the scrutiny with which some appellate [fol. 502] courts study the record in cases of this sort, that it might be a better record if the Emerson testimony was considered as received.

The Court: Mr. Hitz, if you are not objecting to it, and that is what I now understand you are saying, I will overrule myself with a great deal of pleasure. And if you want to tender it, I will receive it.

You have no objection to it being received?

Mr. Rein: I have no objection to it being received. I think I will have to ask Your Honor to read it.

The Court: I will read it.

Mr. Hitz, do you think ten minutes will be adequate? Why don't you advise the clerk when you accomplish your purpose.

(Thereupon, at 2:25 p.m., a recess was taken until 3:40 p.m.)

After Recess

Mr. Hitz: Your Honor, I can give answer to Mr. Rein's request. I have made a request of Mrs. Mary Valenti, who is performing the duties of the recording clerk of the House Un-American Activities Committee, a Mrs. Joray, who is the one who certified to the correctness of the minutes that we offered. Mrs. Joray is out of the country and Mrs. [fol. 503] Valenti is performing her duties while that is the situation. She made a search of the minutes, both before and after February 9. She went back to January 1, 1955, and she went through December 1955. And she said that there was nothing found that bore at all upon the matter of any labor investigation in Fort Wayne or anything relating to Mr. Gojack except those minutes that related to his contempt and instructions to Mr. Tavenner to prepare contempt proceedings. So the situation is where I said I felt I could represent to the Court that nothing else appears at all, either way, on the subject, and now I verify it.

The Court: Thank you.

[fol. 507]

COURT'S FINDINGS (AFTER CONCLUSION OF ENTIRE CASE) —October 28, 1963

The Court: At the conclusion of this entire case, the court took the matter under advisement. I now find as follows:

I find nothing in the evidence adduced by the defendant in his case to require any change in the basic determinations made by the court on the motion of defendant for judgment of acquittal at the close of the Government's case. I therefore incorporate herein those determinations.

There are, however, other issues to be resolved, including whether the complete record shows that the purpose of the hearings was exposure of the defendant rather than a [fol. 508] legitimate legislative one. I find from the record that the purpose of the Subcommittee (as stated at the inception of the hearings and again stated on many occasions

during the hearings and further indicated by the disclaimers of any other purpose) was not exposure of the defendant, but the ascertainment of the extent of Communist Party infiltration into labor. I find this purpose to be a legitimate legislative one. It therefore follows, under the authorities, that the defendant cannot prevail. Indeed, even if exposure occurred, but merely as an incident to the legitimate legislative purpose, defendant still could not prevail.

It should be noted, in viewing the evidence relating to the purpose of the hearings here complained of, that these hearings were but a continuation of previous activities of the Committee and its Subcommittee in the general field (1954 Report, pages 16 and 17). The power of the Congress to legislate in this field (i.e., Communist Party activities) has been sanctioned by the Supreme Court (see Barenblatt, 360 U.S. at page 127).

There has likewise been presented the question of whether the interests and purpose of the Government in holding the hearings were outbalanced by the interests of the defendant [fol. 509] (under the First Amendment), the question as to need for the inquiry, and the question as to pertinency.

The record shows, particularly by the Annual Report of 1954, as well as by other evidence, that the field into which inquiry was here being made has been the subject of legislation by the Congress.

Indeed certain pieces of that legislation emanated from the actions of the Un-American Activities Committee.

It is noted also that the witness Emerson who was called by the defendant demonstrated (by reference in his testimony to legislation bearing direct relation to the subject matter under consideration) that there was an opportunity for enactment of additional legislation in this field. Statutory enactments are seldom static.

In practically any legislative field the need for consideration of new legislation, or amendment of existing laws by additions or deletions, or repeal in whole or in part, and the need for information relating thereto, is ever present.

Determination of whether any one of the foregoing steps should be taken, provided it be within a legitimate legisla-

tive field, is for the legislature, not the judiciary or an expert.

[fol. 510] The record also discloses, among other things, that prior to the hearings in this case the Committee had information as to activities of the Communist Party in the field of labor, in the U. E. Union of which the defendant Gojack was an official. Thus when the Subcommittee was named and date and place for hearing set and subpoenas authorized for defendant and another (all with approval of the Committee), there was a legitimate reason for calling such hearing and for calling defendant to testify.

This was therefore not an indiscriminate dragnet procedure. I have considered all of the evidence in connection with the resolution of the questions of the balancing of interests, need for hearing and pertinency of questions put to the defendant.

Under all the facts and circumstances I find that the interests of the Government outbalance those of the defendant under the First Amendment and that the questions put and deliberately and intentionally not answered were pertinent to the subject matter stated by the Chairman and were put for a legitimate legislative purpose, and that thus the defendant was not justified in refusing to answer the questions.

I further find that the Subcommittee was functioning in [fol. 511] an area authorized by H. Res. 5; that the Chairman of the Subcommittee had at the opening of the hearing detailed the specific inquiry; and that the defendant had knowledge of the particular subject matter under inquiry.

Under all of the evidence and applicable law, I am constrained to find that the Government has proved beyond a reasonable doubt each of the essential elements of the offenses charged in the several counts, and I therefore find the defendant guilty as indicted.

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[fol. 513]

IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 4 FOR IDENTIFICATION

[Stamp—Filed—JAN 16 1964—Harry M. Hull, Clerk.]

May 20, 1963

TO WHOM IT MAY CONCERN:

I, JULIETTE P. JORAY, duly appointed Recording Clerk of the Committee on Un-American Activities of the House of Representatives, do hereby certify that the attached document is a true and correct excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities held January 20, 1955, relating to the authority of the Chairman to appoint subcommittees.

GIVEN under my hand this 20th day of May, 1963.

/s/ JULIETTE P. JORAY
 Juliette P. Joray
 Recording Clerk

[fol. 514]

COMMITTEE ON UN-AMERICAN ACTIVITIES

January 20, 1955

The Committee on Un-American Activities met in executive session Thursday, January 20, 1955, in Room 225, House Office Building, at 2:00 P.M. The following members were present:

Francis E. Walter, Chairman
 Morgan M. Moulder
 Clyde Doyle
 Edwin B. Willis (entered 2:45 p.m.)
 James B. Frazier, Jr.
 Harold H. Velde
 Bernard W. Kearney
 Donald L. Jackson

The following Staff members were present:

Thomas W. Beale, Clerk

Frank S. Tavenner, Counsel

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Mr. Moulder tendered the following resolution which was read by the Clerk:

BE IT RESOLVED, that the Chairman be authorized and empowered from time to time to appoint subcommittees composed of three or more members of the Committee on Un-American Activities, at least one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the Committee as a whole is authorized to perform;

BE IT FURTHER RESOLVED, that in the event a witness be called at a time, when in the judgment of the Chairman it is not feasible to have more than one Committee member present, the Chairman be authorized and empowered to appoint a subcommittee of one member for the purpose of hearing the testimony of such witness: Provided, such witness, prior to the taking of his testimony, shall have agreed in writing to be heard before a one-man sub-committee, and Provided Further, that the ranking minority member shall have been advised prior to such hearing of the appointment of such a one-man subcommittee.

Mr. Doyle moved that the resolution be referred to the subcommittee on Committee Rules. Said subcommittee to be appointed by the Chairman. After some discussion it was unanimously agreed to adopt the first paragraph of the resolution offered by Mr. Moulder, and submit the second paragraph to the subcommittee on Rules.

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[fol. 515] The meeting adjourned at 4:30 P.M.

(Signed) FRANCIS E. WALTER
Chairman

(Signed) THOMAS W. BEALE
Clerk

[fol. 516]

IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 5 FOR IDENTIFICATION

[Stamp—Filed—JAN 16 1964—Harry M. Hull, Clerk.]

May 16, 1963

TO WHOM IT MAY CONCERN:

I, JULIETTE P. JORAY, duly appointed Recording Clerk of the Committee on Un-American Activities of the House of Representatives, do hereby certify that the attached document is a true and correct excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities, held February 9, 1955 setting forth Committee resolution for a hearing in Fort Wayne, Indiana.

GIVEN under my hand this 16th day May, 1963.

/s/ JULIETTE P. JORAY
Juliette P. Joray
Recording Clerk

[fol. 517]

RALPH R. ROBERTS
CLERK

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and

correct excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities, held February 9, 1955, setting forth Committee resolution for a hearing in Fort Wayne, Indiana, February 21, 1955, the original of which is in my custody.

(Seal)

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this sixteenth day of May, anno Domini one thousand nine hundred and sixty three.

/s/ RALPH R. ROBERTS

Clerk, U. S. House of Representatives.

[fol. 518]

COMMITTEE ON UN-AMERICAN ACTIVITIES

February 9, 1955

The Committee on Un-American Activities convened in regular session Wednesday, February 9, 1955, at 10:10 a.m., Room 225, House Office Building. The following members were present:

Francis E. Walter, Chairman

Morgan M. Moulder

Clyde Doyle

James B. Frazier, Jr. (entered at 10:20 a.m.)

Harold H. Velde

Bernard W. Kearney

Gordon H. Scherer

Staff members present were:

Thomas W. Beale, Clerk

Frank S. Tavenner, Counsel

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Mr. Scherer moved that David Mates and John Gojack be subpoenaed to appear before a subcommittee of the Committee on Internal Security in open hearing at Fort Wayne, Indiana; and that a Dr. Scharfman be subpoenaed to appear in executive session at Fort Wayne, Indiana. The Chairman designated Mr. Moulder, Mr. Doyle, and Mr. Scherer as a subcommittee to conduct the hearings in Fort Wayne, Indiana, and set the time at February 21, 1955.

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The meeting adjourned at 11:15 a.m.

(Signed) FRANCIS E. WALTER
Chairman

(Signed) THOMAS W. BEALE
Clerk

[fol. 519]

IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 7 FOR IDENTIFICATION

[Stamp—Filed—JAN 16 1964—Harry M. Hull, Clerk.]

May 16, 1963

TO WHOM IT MAY CONCERN:

I, JULIETTE P. JORAY, duly appointed Recording Clerk of the Committee on Un-American Activities of the House of Representatives, do hereby certify that the attached document is a true and correct excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities held February 23, 1955, setting forth Committee resolution for change of date and place of hearing originally scheduled for Fort Wayne, Indiana, to Washington, D. C., February 28, 1955.

GIVEN under my hand this 16th day of May, 1963.

/s/ JULIETTE P. JORAY
Juliette P. Joray
Recording Clerk

[fol. 520]

RALPH R. ROBERTS**CLERK**

**OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities, held February 23, 1955, setting forth Committee resolution for change of date and place of hearing originally scheduled for Fort Wayne, Indiana, to Washington, D. C., February 28, 1955, the original of which is in my custody.

(Seal)

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this sixteenth day of May, anno Domini one thousand nine hundred and sixty three.

/s/ **RALPH R. ROBERTS**

Clerk, U. S. House of Representatives.

[fol. 521]

COMMITTEE ON UN-AMERICAN ACTIVITIES

February 23, 1955

The Committee on Un-American Activities met in executive session on February 23, 1955, in Room 225, Old House Office Building, at 10:25 A.M. The following members were present:

Francis E. Walter, Chairman

Morgan M. Moulder

Clyde Doyle

Edwin E. Willis

Gordon H. Scherer

Also present were Mr. Beale, Chief Clerk, and Mr. Tavenner, Counsel.

The hearings scheduled to be held at Fort Wayne, Indiana, were discussed. The Chairman stated that upon learning that a National Labor Board election was to be held in Fort Wayne on February 24, he continued the hearings until February 28 and set the place for the hearings in Washington, D. C. Mr. Scherer moved that the Committee hold hearings at a subsequent date in Fort Wayne. The motion died for want of a second. The Committee agreed that after the hearings on February 28 it would then be determined whether further hearings in Fort Wayne would be necessary.

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The meeting adjourned at 11:40 A. M.

(Signed) FRANCIS E. WALTER
Chairman

(Signed) THOMAS W. BEALE
Clerk

IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 12

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE
FORT WAYNE, IND., AREA

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

Eighty-Fourth Congress

First Session

February 28, March 1, and April 25, 1955

Printed for the use of the Committee on
Un-American Activities

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[fol. 523]

CONTENTS

February 28, 1955, testimony of—	Page
Julia Jacobs.....	220
Lawrence Cover.....	227
John Thomas Gojack.....	241
March 1, 1955, testimony of—	
John Thomas Gojack (resumed).....	271
April 25, 1955, testimony of—	
David Mates.....	381
Eugene Maurice Shafarman.....	395

[fol. 524]

RULES ADOPTED BY THE 84TH CONGRESS

House Resolution 5, January 5, 1955

RULE X

Standing Committees

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

(q) Committee on Un-American Activities, to consist of nine members.

RULE XI

Powers and Duties of Committees

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time, investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by such chairman, and may be served by any person designated by any such chairman or member.

[fol. 525]

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE
FORT WAYNE, IND., AREA

Monday, February 28, 1955

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

Public Hearing

The subcommittee of the Committee on Un-American Activities met, pursuant to notice, at 10:20 a. m., in the caucus room, 362, Old House Office Building, Washington, D. C., Hon. Morgan M. Moulder (chairman) presiding.

Committee members present: Representatives Morgan M. Moulder (chairman), Clyde Doyle, and Gordon H. Scherer.

Staff members present: Frank S. Tavenner, Jr., counsel; Donald T. Appell, investigator; and Thomas W. Beale, Sr., chief clerk.

Mr. Moulder. The committee will be in order.

This subcommittee was appointed pursuant to the rules of the House as ordered by Francis E. Walter, chairman of the full committee, and it is composed of three members, the Hon. Clyde Doyle, of California, on my right, the Hon. Gordon H. Scherer, of Ohio, and myself as chairman of the subcommittee. Mr. Scherer, of Ohio, is absent and will be present within the next few minutes.

There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

We had expected to hear at this time the testimony of David Mates, an international representative of the United

Electrical, Radio and Machine Workers of America. His appearance before this committee was continued twice at his own request. At this time the inability of the United States marshal to effect service of process strongly indicates an effort on the part of Mr. Mates to evade service. This matter will be investigated and, if the facts warrant, the House of Representatives will be requested to cause the issuance of a warrant for his arrest and production before this committee as a witness.

In the course of the investigation conducted by this committee at Dayton in September 1954, information was obtained indicating that one or more of the witnesses to be heard today should have firsthand knowledge of Communist Party activities in the area of Dayton and elsewhere.

Mr. Tavenner, are you ready to proceed?

Mr. Tavenner. Yes, sir.

[fol. 526] Mr. Moulder: Call your first witness.

Mr. Tavenner. Julia Jacobs, will you come forward, please?

Mr. Donner. My name is Frank Donner. I am counsel for Miss Jacobs and two other witnesses who have been subpoenaed today. Before Miss Jacobs is sworn in, may I file with the committee for incorporation in the record a motion addressed as to the jurisdiction of the committee to proceed.

Mr. Moulder. You may file the motion; and then whatever action the committee desires to take upon it, we will take.

Mr. Donner. Will it be physically incorporated in the record, sir?

Mr. Moulder. We will decide that question after we have examined the motion.

Mr. Donner. I will file two copies with the committee.

Mr. Moulder. Let the record show that the motion by counsel is duly filed.

Will you hold up your right hand and be sworn. Do you solemnly swear the testimony you are about to give will be

the truth, the whole truth, and nothing but the truth, so help you God?

Miss Jacobs. I do.

[fol. 527]

TESTIMONY OF JULIA JACOBS, ACCOMPANIED BY
HER COUNSEL, FRANK J. DONNER—Resumed

Mr. Tavenner. Miss Jacobs, are you now a member of the Communist Party?

Miss Jacobs. I decline to answer that question on the grounds of the fifth amendment.

Mr. Tavenner. Have you ever been a member of the Communist Party?

Miss Jacobs. I decline to answer the question for the same reason.

Mr. Tavenner. I have no further questions, Mr. Chairman.

Mr. Moulder. Mr. Doyle, do you have any questions?

Mr. Doyle. Miss Jacobs, may I just make this statement to you preliminary to several questions I wish to ask you: I want to make it clear that none of my questions are intended to go into any political belief by you of any sort. Public Law 601 challenges this committee as a subcommittee to go into subversive activities and propaganda. It is expressly so. I want to frankly state that my few questions to you will be directed to you on that basis. That is to see the extent to which you will cooperate with your own United States Congress in ferreting out, uncovering, and revealing to Congress and the people any person or group of persons whether they are in the Communist Party or not, who may be subversive. I assume, unless you answer otherwise, that you, being an American citizen are more interested in your American Government than you are in the Communist Party. I also assume in my question that you, being an employee of a labor union, already know what this committee knows: that American "unionism" and the Communist Party objectives are not the same.

I wish, also to state for your information that my questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist Party in your experience has undertaken to influence labor unions wherever you know anything about them.

[fol. 528] I made that frank statement to you so that you will know in advance what I am trying to get at.

I noticed a very good memory in your testimony this morning, dating away back to 1945 and 1946 and 1951; and you remembered right down to the exact month in 2 or 3 places. I want to compliment you on the memory you have, apparently, for dates and incidents away back. I know you will be very helpful to me in my few questions.

May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any other group to their own Communist Party objectives.

The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening of legislation dealing with subversive activities. I say that, contrary to what some of the publicity has been down in your neighborhood to the contrary.

.

[fol. 529] Mr. Scherer. I have just 1 or 2 observations to make, Mr. Chairman, before we dismiss this witness.

Recalling the Dayton hearings, a witness by the name of Arthur Paul Strunk testified at length. Strunk was a former member of the Communist Party, and during the time [fol. 530] that he was a member of the Communist Party

he was an undercover agent of the Federal Bureau of Investigation.

Now this morning, the counsel for the committee read from Mr. Strunk's testimony. He read that part of Mr. Strunk's testimony which referred to you and your activities in the Communist Party, and to your other activities within the union. You did not deny that testimony, and in fact you refused to answer all questions with reference to Mr. Strunk, basing your refusal on the fifth amendment.

Mr. Strunk is referred to by you Communists as an informer.

I have before me an article appearing in the April 10 issue of the Nation. This article is entitled "The Informer" and it is written by your counsel, Mr. Frank J. Donner. In this article—I might say it is one of the worst distortions that I have ever seen, full of half-truths and misrepresentations, and I am going to proceed to prove that in a few minutes. In that article there is a vicious attack upon those individuals which the author refers to as informers, such individuals as Mr. Strunk.

I am wondering, after he counseled you with reference to your testimony today, whether or not he will write within a short time another similar article attacking Mr. Strunk as witnesses similar to Mr. Strunk were attacked in this article.

I particularly refer to the attack that is made upon Leonard Patterson, who testified against another client of Mr. Donner's before this committee some time ago. That client was the Rev. Jack McMichael. The article to which I referred was published after the testimony of Reverend McMichael, before the committee.

As I said, Leonard Patterson was one of the witnesses who testified with reference to his client, and he proceeds in this article to attempt to discredit Leonard Patterson, whom he refers to as one of these informers. It is under the heading of "How the Clergy Case was Fabricated." Of course, he infers that it was fabricated with help of this committee.

I read from the article:

Another witness was Leonard Patterson, who identified the Rev. Jack McMichael as having been a member of the New York District of the Young Communist League in 1934 and 1935, although in fact, McMichael was enrolled at that time as a freshman at the University in Georgia, Emory University.

That paragraph is written, I suppose, in an effort to further discredit Patterson, and to prove that he lied.

Now, the testimony—and I have the McMichael testimony—shows very clearly that Reverend McMichael did not deny that he was in New York in the year of 1934 and 1935, and this article does not point out at the conclusion of Reverend McMichael's testimony that it was referred by this committee, by unanimous vote to the Department of Justice for possible perjury prosecution.

Now, you get some idea of what I mean by the distortions that appear in such articles as this.

I might make this further observation: As I say, the particular paragraph that I read appears under the heading of "How the Clergy Case was Fabricated," and I make this further observation. It was Leonard Patterson who testified that during the time he was active in the Communist Party in New York that two young ministers were sent or came from Union Theological Seminary in New York [fol. 531] down to Baltimore and received assignments for work in the Communist Party. He did not remember at that time the names of those two individuals, but subsequent investigation by the staff of this committee determined who those two individuals were. Those two individuals were subpoenaed before this committee.

One minister admitted that the testimony of Patterson was true; and the other one, not knowing that the other minister had admitted it in executive session, came before this committee and perjured himself. The other minister's testimony was again unanimously referred by this committee to the Department of Justice for perjury prosecution.

tion, and the perjury in that case was obvious. There was additional testimony to substantiate the testimony of the first minister.

I point out in this attack on Patterson the article does not mention anything about Patterson's testimony in the Novak case, or the Hutchinson case, and the results of those cases.

That is all I have to say.

Mr. Moulder. Miss Jacobs, I wish to make one very brief comment. Some accusation has been made and I have read in some newspaper articles where these hearings have been referred to as an effort on the part of the Committee on Un-American Activities to break or bust unions.

In defense of all of the members of the committee, including myself, I wish to say that there certainly is no desire on our part to interfere with any union functions or to bust or to break or destroy any labor union.

Mr. Scherer. Except to help them relieve themselves of Communist domination.

Miss Jacobs. I am afraid it is having that effect in our election.

Mr. Moulder. My record as well as other members of the committee has been in support of organized labor throughout our careers in Congress. No one believes stronger in organized labor than I do, although I do not represent what you would call a labor-dominated congressional district. But it is our intention and purpose to point out to the public, as well as union members, Communist domination or Communist activities in such unions wherever it may exist.

I believe that the public as well as the labor members should be informed of that, because everyone knows that communism will eventually destroy organized labor if it gains control of organized labor.

[fol. 532] Mr. Moulder. In St. Joseph, Mich., they have many attorneys, do they not, who are engaged in the practice of law there?

Miss Jacobs. Yes.

Mr. Moulder. But you have the right, of course, and the privilege, to select and employ any attorney you wish to appear here with you in proceedings before this committee.

May I ask you where you first met Mr. Donner?

(The witness conferred with counsel.)

Miss Jacobs. I met him here in Washington.

Mr. Moulder. For the first time?

Miss Jacobs. Yes.

Mr. Moulder. This week?

Miss Jacobs. Yes.

Mr. Moulder. After you were subpoenaed to appear before this committee, did you consult or confer with anyone in St. Joseph as to what action you should take with reference to your appearance here as a witness?

Miss Jacobs. Yes.

Mr. Moulder. Not one person?

Miss Jacobs. No, I didn't consult with anybody.

Mr. Moulder. Nor discuss?

Miss Jacobs. I had conversation with members here and there, but I did not consult with anyone until I saw him.

Mr. Moulder. You did not consult with anyone on the subject of your appearance here before the committee?

Miss Jacobs. No.

Mr. Moulder. Then how, and why, did you happen then to employ Mr. Donner, if you met him for the first time this week—If you had not consulted or conferred with someone there in St. Joseph?

Miss Jacobs. Well, I did not consult with anyone, but in discussing it with the union, it was handling the thing, and they hired Mr. Donner to handle my case, and Mr. Gojack's case, and Mr. Cover's case as well.

[fol. 533] Mr. Moulder. Are you acquainted with Mr. (Dean) Robb, an attorney in Detroit?

Miss Jacobs. Yes.

Mr. Moulder. Did he represent you before today, before Mr. Donner was contacted?

Miss Jacobs. What do you mean "did he represent me"?

Mr. Moulder. Do you know of your own personal knowledge whether he was first employed to represent you?

(The witness conferred with counsel.)

Miss Jacobs. Well, originally I had called Mr. Robb to see if he could handle the case and we had arranged he would meet me in Washington to discuss what my rights would be, and it turned out that Mr. Donner—

Mr. Moulder. Who represents the local union in St. Joseph—what attorney there represents them?

Miss Jacobs. We don't have any attorney. I mean we hire an attorney for this, or an attorney for that case, and we don't have any regular attorney.

Mr. Moulder. None who represents the union?

Miss Jacobs. Mr. Robb has taken one or two cases for us on unemployment compensation, and that type of thing.

Mr. Moulder. All right. That is all.

.

[fol. 534]

TESTIMONY OF LAWRENCE COVER, ACCOMPANIED BY
HIS COUNSEL, FRANK J. DONNER

.

[fol. 535] Mr. Cover. I would like to state that I resent very much being called before this committee because I feel like I was called before this committee because of my activities as a citizen of the United States, of wiring and sending wires and writing my Congressman and Congressman Walter. I feel that as a citizen of the United States, I have a right to contact my Congressman or any other Congressman at any time on any subject, and point out my views and I resent it very much that I was called before this committee.

Mr. Moulder. You certainly do have a right to contact your Congressman to exercise your rights as an American citizen, as you have stated. However, there is no knowledge on my part or I am sure on the part of any other members of the committee that you were subpoenaed because of your sending telegrams. You were subpoenaed, I assume, for the

purpose of the committee securing any information you may have concerning your knowledge, if any, of Communist activities, subversive activities which we wish to expose wherever it may exist.

Mr. Tavenner hasn't asked you this question—I am sure you would wish to voluntarily so state yourself—whether or not you were ever a member of the Communist Party, now or at any time in the past.

Mr. Cover. I would like to make a statement on that.

[fol. 536] Mr. Moulder. All right.

Mr. Cover. I don't think it is any of the committee's business, but I am not and have not and never will be.

Mr. Moulder. You do not consider it the committee's business as to whether you are or not?

Mr. Cover. I don't think it is your business whether I am a Democrat or what.

Mr. Moulder. Do you consider it our business whether you are a Communist?

Mr. Cover. I don't think it is under the Constitution of the United States.

Mr. Moulder. In view of that statement, are you a Communist?

Mr. Cover. No, I said "No," definitely "No."

Mr. Moulder. But if you were you would consider it none of our business?

Mr. Cover. That is right.

Mr. Moulder. Do you have any questions?

Mr. Scherer. I have a telegram here that was not signed by—your name is what?

Mr. Cover. Lawrence Cover. C-o-v-e-r.

Mr. Scherer. He may have some knowledge of it. You are an officer of what local?

Mr. Cover. Local 905.

Mr. Scherer. Did you attend a meeting of the officers and board members of the joint UE council shortly before February 15?

Mr. Cover. Repeat your question. I don't know just what you mean. Which meeting do you mean?

Mr. Scherer. I am referring to a telegram that I received signed by the officers and board members attending the joint UE council meeting evidently on or before February 15, the date of the telegram is February 15.

Mr. Cover. February 15, from New York?

Mr. Scherer. The telegram evidently comes from Fort Wayne.

Mr. Cover. No, I did not attend that meeting.

Mr. Scherer. Do you know who those men would be?

Mr. Cover. No, I do not.

Mr. Scherer. Do you have any idea who they would be?

Mr. Cover. I do not.

Mr. Scherer. You are from Fort Wayne?

Mr. Cover. No, I am from Peru, which is 60 miles from Fort Wayne.

Mr. Scherer. Do you have any knowledge who the officers are of locals 902, 903, 910, 916, 919, 933?

Mr. Cover. I would probably know them if I met them, but offhand I don't know them.

Mr. Scherer. You cannot tell me the names of any of them?

Mr. Cover. I couldn't tell you the names.

Mr. Scherer. What is at 1835 South Calhoun Street, Fort Wayne?

Mr. Cover. The district office.

Mr. Scherer. Have you ever been there?

Mr. Cover. Oh, yes, many times.

Mr. Scherer. That is the district office of UE?

Mr. Cover. That is right, district 9 office.

Mr. Scherer. Is that where the officers and board members of the joint UE council would meet?

[fol. 537] Mr. Cover. That is right.

Mr. Scherer. Are you a member of the joint council of the UE?

Mr. Cover. Not what you would call the joint council. I am a member of the district council.

Mr. Scherer. What is the joint council?

Mr. Cover. I assume it is a joint council of the locals in Fort Wayne alone. I am not sure of that, but I would assume that is what it is.

Mr. Moulder. May I pursue that a moment?

Assume the same line of questioning we were discussing a moment ago about your position that it was no business of this committee as to whether or not you were a Communist or a member of the Communist Party.

The committee, of course, as stated by Mr. Doyle, is dedicated to expose communistic activities. In your official capacity as steward of your union, and with the company where you are now employed, would you employ or approve the employment of a known Communist in your plant?

Mr. Cover. Would have nothing whatever to do with it.

Mr. Moulder. I am asking you whether or not you would approve of it.

Mr. Cover. I am not sure that I would, but I am telling you I would have nothing to do with the employment. Our company employs who they wish.

Mr. Moulder. If there was an effort according to testimony produced before this committee on the part of the Communist Party organization in this country to infiltrate strategic defense plants with Communist Party members and active Communists, do you approve or disapprove of that?

Mr. Cover. Repeat your question. I don't want to answer it incorrectly.

Mr. Moulder. There has been testimony before this committee indicating and proving in some cases the efforts on the part of the Communist Party organization in this country to infiltrate defense plants and some unions with active Communist workers. I say do you approve or disapprove of that?

Mr. Cover. In making, I started to say I would like to make my point clear. When I stated I did not think it was any of the committee's business I would like to make it clear that I think we have governmental agencies that are well prepared and capable of taking care of any subversives we might have in this country.

Mr. Moulder. We are trying to assist those Government agencies in every way we can.

Mr. Cover. I don't think this committee has the right to inquire into a man's political ambitions, according to the Constitution of the United States.

Mr. Moulder. Do you consider the Communist Party a political organization?

Mr. Cover. So far, the Supreme Court has never ruled it otherwise. When they do I will abide by the Supreme Court.

Mr. Moulder. What is your opinion of the Communist philosophy?

Mr. Cover. I don't approve of it.

Mr. Moulder. Do you not feel in your capacity as a leader of the union you represent that you would encourage Communist participation in the affairs of your union?

[fol. 538] Mr. Cover. Could I answer you this way, sir? Our organization has been organized for 18 years and I have been one of the leaders in the union. We have never had a strike in our plant but still we have one of the best records of any local within the district and I think that our record stands on itself.

I think we would disapprove of anybody coming in telling us how to run our local. We run our own local.

Mr. Moulder. If there was a candidate for an official position in your local, a known Communist or known to you to be a Communist, would you vote for him or oppose him?

Mr. Cover. I would have to abide by the wishes of the membership. The membership votes by a secret ballot and if they voted him in I would have to live with it.

Mr. Moulder. How would you vote?

Mr. Cover. I would probably vote against him. Does that suit you?

Mr. Doyle. Did you give us the benefit of knowing where you worked these 33 years?

Mr. Cover. Square D Co.

Mr. Doyle. What do they manufacture?

Mr. Cover. Electrical products.

Mr. Doyle. I assume from your appropriate statement that you have been and are quite a student of matters affecting unions, trade unions and organizations so far as legislation is concerned.

Mr. Cover. I try to confine myself to the unions and legislation.

Mr. Doyle. I conclude that from your voluntary statement. I want to compliment you on your studies.

Are you familiar with Public Law 601?

Mr. Cover. No. I have written down here on my envelope to ask my Congressman for a copy of that as soon as I can get to see him.

Mr. Doyle. You be sure and do that because I am under the impression that when you read Public Law 601, you will realize then that this committee has an official job to do which is assigned it by your Congress. We are not here just as a volunteer group, as you realize. Congress back in the 79th session in 1946 enacted Public Law 601, which charged the Committee on Un-American Activities, of which we three men are a subcommittee, with investigating subversive activities and propaganda wherever it was.

I want to make it clear to you that we are here discharging an official assignment.

Mr. Cover. I realize that, but I still think that the committee interferes in union affairs. Maybe it is unfortunate and at the wrong time, but I still think you interfere with union affairs.

Mr. Doyle. May I state this, that so far as I know, we in the committee have had no notice and no knowledge of any oncoming elections back in your area at the time the meeting was set. I was present, happened to be, when the date was set for the hearing to have occurred recently, but this hearing before your union or down in your area was a matter that we had planned last year, many months ago. Because of workloads we didn't get to it. So at the first meeting of our group a couple of weeks ago we included the trip to your area as one of the places where we should promptly go to clean up what was hanging over from last year.

You do notice that because among other things we did not want to be involved in a legitimate charge of trying to hurt [fol. 539] any election situation, we did not go there and of course we have only called 2 or 3 of you folks here.

But may I state to you frankly that we intend to go to any area, including yours, where we believe there is reason to go. We believe there is reason to go to your area when the time comes. There are certain people there that we want to question, our investigators will have completed more of the job and we believe we will get more facts and more truth as a result of further investigation.

Now I am sure that you heard my statement to Miss Jacobs.

Mr. Cover. That is right.

Mr. Doyle: I will not repeat it to you. I should like to add before I ask you 2 or 3 questions, so you will understand my attitude as a member of this committee, in private life I am a lawyer and have always taken the position that any patriotic American citizen has a right to think what he pleases, do what he pleases, and be what he pleases provided he does it within the four corners of the Constitution.

He has to do it in my book in accordance with law—that is, in my book. I want to supplement what Mr. Moulder said. I as a member of this committee serving my ninth year in the House here have always been favored with the endorsement of the CIO and the A. F. of L. Yet I have never been a member of a labor union, never have I been an attorney for a labor union. But may I make this clear: That we as a committee have had plenty of evidence over the Nation that the Communist Party in this country has had and does now have a continuous infiltration program to try to take control of the policies and functions of certain labor unions and our information is that the Communist Party has had that policy toward the union of which you are a member.

Mr. Cover. You mean my local union?

Mr. Doyle. Well, in your area, the UE, the International UE. We wouldn't be having you and the other people here to help us in this investigation if we didn't have pretty definite information about certain levels in UE. But we would not be having this investigation if we did not have pretty clear evidence of some sort of subversive activity in your area.

Now, may I ask you just two or three questions, please, Mr. Cover. Again it is rather refreshing to have a person who has been subpoenaed, even though you find it unpleasant and inconvenient, to come and volunteer that you are not a Communist and never have been and never would be.

It is very refreshing to me as a Member of the Congress to hear that sort of voluntary testimony because I have seen so many people in these years who plead the amendment because they have been told to when they don't mean a speck of the words they state because they are not sincere in it many, many times. It is a flimsy curtain behind which they are hiding in many, many cases.

But may I ask you this: You have been steward of the company union and you have been secretary of your union for 10 or 15 years?

Mr. Cover. I would say 18 years.

Mr. Doyle. At any time during that 18 years have you taken notice of your own personal observation, knowledge of [fol. 540] any effort on the part of any Communist Party leader or leaders to get into your union membership?

Mr. Cover. No, sir.

Mr. Doyle. Before any union meeting which you have ever attended, has your own local union or of district 9 of which you are a member now, you understand, have you ever been present when any man or woman known to you or introduced to you or believed by you to be a member of the Communist Party addressed the meeting?

Mr. Cover. Sir, I don't know of any Communists within our district. That is a peculiar thing, and I have told my own members the same thing. I have been in this thing, I have helped form our own local, helped form the district,

and I have been in it for 18 years and I have never had anybody ask me to join the Communist Party or whisper to me any kind of propaganda or anything like that. It is very peculiar, me being in the thick of all this, that I have never had anybody proposition me in any way.

Mr. Doyle. I don't it is peculiar. Now and then we see a man or woman stick out as prominently patriotic, vigorous, vigilant, and a sneaky, deceitful member of the Communist Party wouldn't approach that kind of person very often because they know they would not get by with it.

It may be that is the reason they have not approached you.

Mr. Cover. Certainly I have never been approached.

Mr. Doyle. If that is the reason I want to compliment you.

Mr. Cover. I would like to point out another thing: Our local prides itself that we run our local, the people do. For 18 years the membership has run it.

Mr. Doyle. Do you now have according to your knowledge, any member of the Communist Party in your union membership?

Mr. Cover. No, sir.

Mr. Doyle. So far as you know?

Mr. Cover. So far as I know there is not one.

Mr. Doyle. Have you ever seen any Communist literature distributed in your local?

Mr. Cover. No, sir; never.

Mr. Doyle. Have you ever seen any of it on the reading tables of the local?

Mr. Cover. No, sir.

Mr. Doyle. Have you ever seen the People's World there?

Mr. Cover. No.

Mr. Doyle. The Daily Worker?

Mr. Cover. No.

Mr. Doyle. Or the March of Labor?

Mr. Cover. We get the March of Labor, and read it every month.

Mr. Doyle. Has there ever been to your knowledge any contribution directly or indirectly to the Communist Party or any Communist front?

Mr. Cover. Not that I know of.

Mr. Doyle. Is there any group to which you have ever raised an objection about making any contribution on the ground that it might be a Communist front?

Mr. Cover. Sir, we make very few contributions outside of civic contributions, and to locals who are out on strike and for, I would say the last 5 or 6 years we have had a [fol. 541] policy of only contributing to locals within our own district as near as possible. Unless some other local was in very bad straits we didn't even contribute to them when they were on strike.

Mr. Doyle. I presume—and I don't want to ask you the amount in that union defense fund—but I assume it is a sizable fund?

Mr. Cover. You mean the local defense fund?

Mr. Doyle. Yes, the union defense fund which you testified Mr. Gojack and two others controlled.

Mr. Cover. That is the district defense fund and not being in on the last audit, I wouldn't know how much is there.

Mr. Doyle. Has the subject of the Communist Party, its functioning in the United States of America with respect to labor unions, ever been discussed in any of your locals or committees to your knowledge, in your presence in all the 18 years that you have been secretary of your local?

Mr. Cover. What do you mean by "discussed"?

Mr. Doyle. I mean discussed.

Mr. Cover. You mean the good parts of it or—

Mr. Doyle. Yes, the good or bad.

Mr. Cover. Well, I can't say that it has actually been discussed, no. Once in a while groups get around and discuss what is going on, naturally. Various articles they read in the newspaper and things like that, they discuss that, sure, just like any other group of American citizens would discuss things that they read.

Mr. Doyle. That is good.

Now, in view of the fact that you offered the suggestion that there might be good parts about the Communist Party

program as well as bad, I will ask you if it isn't a fact that the good parts of the Communist Party program have been discussed in your local in your presence.

Mr. Cover. Sir, I believe you misconstrued my statement there.

Mr. Doyle. I didn't intend to misconstrue it. You volunteered that language. Which did you mean, good or bad.

Mr. Cover. I didn't mean it in the sense that you are taking it. I asked you if you were asking us if we were discussing the good parts or the bad parts. I did not know how you were asking, putting the question.

Mr. Doyle. Discussing communism, leave it that way.

Mr. Cover. The only thing ever discussed was what we read in the papers. We read an article now and then and somebody gets to chewing the fat on it.

Mr. Doyle. You do it on the floor of the union?

Mr. Cover. No, it doesn't, it comes up in the shop among the various little groups that sit around and talk during rest periods or lunch periods. Never has it been discussed on the floor of the union.

Mr. Doyle. Nor in committees of the union?

Mr. Cover. No, sir. We don't have the issue in our shop so we don't bother with it. We have too much union issues to take care of that we don't need to enter into any of this other.

Mr. Doyle. I notice you said in answer to Mr. Tavenner and I wrote it down—"No, sir; our meeting was devoted to unionism and the best way to handle it." Those were your exact words. Let me ask you again, please. I am not trying to get you to say something that may not be a fact, because we only want facts. Let me preface my next [fol. 542] question by saying this: When you tell us that or tell me in answer to my question that in all 18 years with the union numerically as strong as yours is and going through the various union plans and fights for control and so forth, that have gone through your union, when you tell me you have never discussed communism on the floor

of the union I want to say to you it is the first such testimony I have heard before this committee in all the years I have been on it.

Mr. Cover. We don't have very many fights for control in our local unions.

Mr. Doyle. Apparently not.

Mr. Cover. We are pretty well in harmony. Otherwise we wouldn't stay the way we are for 18 years.

Mr. Doyle. You referred to a Supreme Court decision. You didn't refer to it, but you said when the Supreme Court rules that the Communist Party is illegal then you will—

Mr. Cover. I will abide by their decision; yes, sir.

Mr. Doyle. Have you read the findings of various governmental boards that the Communist Party is subversive?

Mr. Cover. I have read some of them, yes, naturally I read some of them.

Mr. Doyle. Of course you read them.

Mr. Cover. But as yet, as I understand it the Supreme Court has not outlawed the Communist Party as a political party as such. That is the point I wish to make.

Mr. Doyle. Well, but your own Government boards dealing with the subject of communism have found, several of them, and this committee—our full committee representing the United States Congress—declared their finding that the American Communist Party was part of an international conspiracy to violently overthrow our form of government. You have read that, too, haven't you?

Mr. Cover. I have read that, yes, sir.

Mr. Scherer. The Supreme Court so held.

Mr. Cover. In the eyes of a lot of people in my home town—you gentlemen subpoenaing me to appear before this committee—I am going to be a Communist no matter what I can say. That is going to be hard for me to live down—I wish you would understand that. Even though I have testified that I am not—so by that same reasoning I figure that there is a lot of your committees and a lot of your govern-

mental agencies that have declared certain organizations subversive and communistic that may not be.

I don't know. I am not saying they are not.

Mr. Doyle. Merely the fact that we subpoenaed you is no indication and should not be taken by a sensible person that you are a Communist.

Mr. Cover. Some persons are not sensible.

Mr. Doyle. Your own community knows whether they can believe you under oath and you testified under oath you never have been. You have lived in that community for years.

Mr. Cover. Fifty-three of them.

Mr. Doyle. If your community doesn't know enough to believe you and what you testified to under oath then of course it is too late for the community to learn you now.

I want to make that clear. If there are cases where we subpoena people whom we have no reason to make sure that they are Communists, but we also have reason to believe that if they tell the truth they can help us uncover this conspiracy. Possibly you were in that class. You have testified that you were not a communist, never have been and never would be. You testified you have never heard it discussed on the floor of your union. Maybe we have other testimony that would contradict that.

Mr. Cover. I am willing to listen to it.

Mr. Doyle. If we have, that will come out eventually; if not now, shortly.

Mr. Cover. I can tell you I certainly don't fear any other testimony.

Mr. Doyle. I am not inferring, Mr. Cover, even if someone else swears under oath to the contrary, that your testimony is not to be taken with full faith and credit. I take it for granted a man who worked for the company 33 years and is a steward is not going to knowingly mislead this committee.

I do wish to urge you, sir, because you are in a unique position as steward in that company of a bunch of American workers, men and women, I just want to add this one word

to you as you go home. I know about the American Communist Party and its conspiratorial nature and objectives and its determination to rule or ruin by force our constitutional form of government and do away with it whenever they think it is time to make the move. When I went overseas last time to Asia and to Europe with the Armed Services Committee, I asked most of the American ambassadors and American consuls and our American intelligence as well as foreign intelligence what they thought of the proximity or tieup if there was one, between the program of the American Communist Party and the Communist Party overseas in Europe and Asia.

I can just say to you that the answer was one and the same, unanimous, one and the same international conspiracy.

How in the world you, in the high position you hold, can give the edge to the American Communist Party and decide to wait until there is a ruling of the Supreme Court, which may not come for years on just that point, how in the world you can give the American Communist Party the benefit of the doubt when so many of your own Government agencies have pronounced—and you have read it—that it is an international conspiracy, it is more than I can understand.

Mr. Cover. I am saying that the Supreme Court has not overruled them and I do think that we have adequate agencies to take care of it.

Mr. Doyle. But the FBI does not do the work we do. There is no other agency of Government who does the work that this congressional committee is challenged to do, not one. You cannot name one. They do not function the way our committee does or under the regulations our committee does. They are not expected to function in this field the way we are expected to function.

Mr. Cover. That is what I resent about this committee. I don't think the functioning of the committee is proper to indict people. If they are guilty it is different.

Mr. Doyle. I want to invite you to give your own Government the benefit of your consideration instead of giving the Communist Party the benefit.

Mr. Cover. I am not giving the Communist Party the benefit of any consideration.

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[fol. 544]

TESTIMONY OF JOHN THOMAS GOJACK, ACCOMPANIED
BY COUNSEL, FRANK DONNER

Mr. Moulder. Are you accompanied by counsel?

Mr. Gojack. Yes.

Mr. Moulder. Counsel, state your name.

Mr. Donner. My name is Frank Donner, 342 Madison Avenue, New York City.

Mr. Tavenner. Please state your name.

Mr. Gojack. John Thomas Gojack.

Mr. Tavenner. When and where were you born, Mr. Gojack?

Mr. Gojack. Mr. Congressman, before I answer any more questions I want it clearly understood in the record that I am protesting my appearance, my subpoena before this committee, because this committee is not engaged in—

Mr. Moulder. Mr. Gojack, under the rules of the committee you are not permitted to make an opening statement preceding the testimony which you are about to give. If you have a statement we will be happy to receive it and file it.

Mr. Gojack. Mr. Congressman, I was subpoenaed to come here, I am protesting my appearance here and before I answer any questions I want to state my protest and the grounds of my protest.

Mr. Moulder. You can file your protest as part of the proceedings. It will be received and filed. But the committee's rules prohibit your making a statement denouncing the committee and the conduct of the hearings or subpoena under which you are appearing here.

Mr. Gojack. I haven't denounced the committee yet.

Mr. Moulder. I assume you are about to, apparently.

Mr. Gojack. No, I am going to state my position before this committee if you will permit me to explain my position.

Mr. Moulder. After you have been interrogated, then, if you want to make an explanation concerning any of the [fol. 545] testimony or matter brought out by the testimony, you will probably be permitted to make a short statement if it is relevant to the questions and subject matter.

Mr. Gojack. If I know this is a union-busting venture and not a—

Mr. Moulder. That is not tolerated. Such conduct on your part, or statement, is not tolerated by the committee.

Mr. Gojack. I can prove it.

Mr. Moulder. Proceed with your questioning, Mr. Tavenner.

Mr. Tavenner. When and where were you born, Mr. Gojack?

Mr. Gojack. I was born in Dayton, Ohio, August 15, 1916.

Mr. Tavenner. Where do you now reside?

Mr. Gojack. I reside in Fort Wayne, Ind.

Mr. Tavenner. What is your address in Fort Wayne?

Mr. Gojack. My address is 2303 Florida Drive. Right here I would like to express some resentment against the way in which insinuations were made in questioning the previous witness, who happened to be a guest of my wife in my home.

Mr. Tavenner. Since you have raised that question, how long had you known Julia Jacobs?

Mr. Gojack. Before I answer that question I want to explain that this is not a legislative investigation for a bona fide legislative purpose.

Mr. Doyle. I submit the witness is reading a statement. His counsel and he are well informed of rule 9. If he wants to make the statement, under rule 9 he should file it with the committee for the record of the proceeding.

I think we ought to proceed in regular order.

Mr. Donner. Under the practice of the committee you permit the witness to explain his answer.

Mr. Doyle. He is reading a prepared statement and you know he is.

Mr. Scherer. The question is how long has he known Julia Jacobs.

Mr. Moulder. I think the witness should be further advised that this conduct on his part certainly might present foundation and basis for citation for contempt.

Proceed with your questioning.

Mr. Tavenner. Will you answer the question, which is: How long have you known Julia Jacobs?

Mr. Gojack. I don't recall the exact number of years. It happens that she worked for our union, as she testified here, for a good many years, and as a representative of the same organization which employed her for many years. I had occasion to meet her at union conferences and to meet her in connection with our union's activities over a number of years. I don't recall the exact time and date.

Mr. Tavenner. As I understand, you say your acquaintanceship arose out of work in your union?

Mr. Gojack. I happen to have known her family before that. I played with her brother as a child in Dayton, Ohio.

Mr. Tavenner. I am trying to get the facts. When did you first meet her?

Mr. Gojack. I don't recall. When I was about 6 years old I was placed in an orphanage and I have a hazy recollection of whom I knew before that. I don't even know [fol. 546] the lady's age but I know that some years after that because her family lived across the street from where my family and one of her brothers was a chum of mine.

Mr. Tavenner. Did you know her prior to the time she was employed by the union?

Mr. Gojack. I knew of her. I didn't know her personally.

Mr. Tavenner. How long was it after she became employed in 1940 that you first met her personally and became personally acquainted with her?

Mr. Gojack. I went to work for this union after helping to organize the plant I worked in in 1940, and it was some time after that that I came to know Miss Jacobs as an employee of one of our local unions.

Mr. Tavenner. Will you tell the committee, please, what your present occupation is?

Mr. Gojack. My present occupation is in the capacity as general vice president and district president of the United Electrical, Radio, and Machine Workers of America, union organization that your chairman announced in the press he was out to put out of business. That is part of the reason why I think this whole investigation is a union-busting venture and not legitimate investigation.

Mr. Tavenner. Are you an officer of district No. 9?

Mr. Gojack. Yes.

Mr. Tavenner. What is that office?

Mr. Gojack. I stated in answer to your first question, president of district 9.

Mr. Tavenner. A district president. You didn't state what district.

Mr. Gojack. I happen to be elected president of district council 9.

Mr. Tavenner. You didn't state what district. Will you tell the committee, please, what your formal educational training has been?

Mr. Gojack. Well, my formal education consists of 7 years in parochial and public schools and if you want to include other educational experiences, I will be glad to recite them.

Mr. Tavenner. I am speaking of your formal educational training. That was the question. Did you attend any other schools besides those that have been mentioned?

Mr. Gojack. I believe I went to school when I was in the Army some years ago, and I consider my 16 years in the labor movement somewhat of a schooling—starting with the original chairman of this committee.

Mr. Tavenner. Will you please tell me what your employment has been beginning, say, in 1935?

Mr. Gojack. Well, in 1935 I joined the United States Army. In 1937 while I was still in the United States Army when I was home on an emergency leave because my wife and child had been seriously ill in the hospital, and I was granted such emergency leave, I went to work for the

General Motors Corp. in Dayton, Ohio, Delco Products plant because I couldn't feed my family on my \$21 a month Army pay at the time. I was hired and went to work for that company.

Mr. Tavenner. What was the name of the company?

Mr. Gojack. Delco Products Corp., General Motors Division, Dayton, Ohio.

Subsequently I went back to my Army base and—

Mr. Tavenner. When did you go back to your Army base?

Mr. Gojack. I had been trying to secure a dependency discharge through my Congressman but there was too much red tape involved so, needing to earn more than \$21 a month, I arranged for a purchase discharge in 1937.

[fol. 547] Mr. Tavenner. You were discharged from the Army in 1937?

Mr. Gojack. Yes, with an honorable discharge.

Mr. Tavenner. Did you then become a member of the Reserve?

Mr. Gojack. Then I, if I recall, at that time or shortly thereafter the Regular Army Reserve was organized and I was one of the first members in Ohio, according to some of the recruiting people, I became a member of the Regular Army Reserve.

This was in Inactive Reserve and I think it was a very modest sum of a few dollars a year or a month, I don't recall which.

Mr. Tavenner. How long did you remain a member of the Reserve?

Mr. Gojack. Well, some time in 1940 or 1941, I forget exactly, I received a communication from the Reserve with some inquiry about my family status, whether or not I had dependents, and I had to respond that I had a family at that time, that I did have dependents, whereupon I was given a discharge from the Reserve rather than being called up.

That was before there were arrangements being made for dependency allotments and those people who had de-

pendents were given discharges, or so I was given to understand.

Mr. Tavenner. You were given a discharge when?

Mr. Gojack. I don't recall the exact date. Some time in 1940 or 1941.

Mr. Tavenner. What was the period of your enlistment when you entered the Army in 1935?

Mr. Gojack. I enlisted in September, either 5 or 9, I forget the exact date, 1935, and it was the latter part of March, if I remember correctly, when I was discharged.

Mr. Tavenner. March of what year?

Mr. Gojack. 1937.

Mr. Scherer. The question was, What was the period of enlistment?

Mr. Gojack. The enlistment in the Regular Army was December 1935 until approximately March 1937.

Mr. Tavenner. When you enlisted was it for a 1, 2, or 3-year term?

Mr. Gojack. Three-year term.

Mr. Tavenner. You did not serve the 3 years?

Mr. Gojack. For the reasons that I stated, that my wife who had been employed, had to give up her job when she gave birth to our son, and there was a lot of talk about munificent salaries. I was making \$21 a month. I had to go to work.

Mr. Tavenner. I understand you to say you left the Delco Products Co. and went back into the Army and then were discharged.

Mr. Gojack. Yes. I got my job originally when I was home on leave.

Mr. Tavenner. Did you go back to the same employment after you came back from the Army and received your discharge?

Mr. Gojack. Yes, I told my foreman I had to go back.

Mr. Tavenner. How long did you remain employed by the Delco Products Co.?

Mr. Gojack. Off and on until sometime the summer of 1940. By off and on I mean that we had had considerable

layoffs, I had worked 2 or 3 months and then I would go on work relief. I went on WPA,¹ and didn't have any real long stretch of employment until we organized the union in that plant.

[fol. 548] Mr. Moulder. That statement will be stricken from the record because it was not responsive to the question, and has no relevancy to the question asked or subject matter under investigation, and also the remark concerning the \$10,000 raise should be stricken from the record.

(Remarks by the witness stricken from the record.)

Mr. Tavenner. Did you make application for discharge from the United States Army?

Mr. Gojack. Yes.

Mr. Tavenner. Did you make application for discharge from the Reserve Corps?

Mr. Gojack. Not the Reserve Corps. I received a letter from the Reserve Corps asking me whether or not I had a family. As I remember, it was a form letter. And I called some people in the Dayton Post Office and the Army office there and I asked them whether they had any arrangements for dependency allotments. This was in 1940, if I recall, it was before Pearl Harbor, of that I am positive. I was informed there was none. So I explained to them that I had a family to look after and that was it. I didn't volunteer anything either way. I wrote a letter answering the form letter, giving them the fact that I had a family to take care of.

Mr. Moulder. Did you have a family at that time?

Mr. Gojack. Yes, at that time I had a wife and son.

Mr. Tavenner. Possibly I can refresh your recollection about that. Our investigation shows that on December 31, 1940, you made an application for discharge on grounds of dependency, at which time you stated your salary was \$110 a month. Do you recall that?

Mr. Gojack. Sir, I answered that question. I recall receiving a form letter. To the best of my recollection it asked

¹ Reference refers to Works Progress Administration.

what my family status was and there was something in the letter about people with dependents having to declare that because there was no arrangement for allotments, whatever the information I got, because the letter itself didn't answer my questions.

I sought out what the regulations were. I was told that I would have to request consideration based on dependency, if that were the circumstances of my situation. I wrote them in response to the letter what my salary was at that time and if you say it was \$110, it probably was.

Mr. Tavenner. You applied for discharge and furnished two affidavits, did you not, to the Government as proof of your status? Do you remember that?

Mr. Gojack. No, I don't.

Mr. Tavenner. I will hand you herewith a copy of an affidavit by Arthur L. Garfield, and ask you to examine it and state if you did not submit that with your application for a discharge.

Mr. Gojack. Now that you show me this affidavit signed by Arthur L. Garfield, I recall that Arthur L. Garfield was the international representative of the union, under whom I was working at the time, and who would have to furnish evidence that I was employed and that I had dependents, as this affidavit says, my wife and son, who was at the time 3 years of age, were totally dependent upon my personal earnings as husband and father.

Mr. Tavenner. You did submit application and filed an affidavit in support of it. Was Mr. Garfield your superior at the time?

Mr. Gojack. Yes, sir.

[fol. 549] Mr. Tavenner. Over what period of time was he your superior?

Mr. Gojack. To the best of my recollection, Mr. Garfield was, as international representative, I wouldn't say my superior, I worked under his guidance, from August 1, 1940, until about the early part of March 1941.

Mr. Doyle. Mr. Chairman, he is again reading a statement and I object. If he wants to file the statement, let him do it. The witness and counsel know it, he is reading

a statement. I object to it as a violation of our committee rules.

Mr. Moulder. That part of his statement which he has just made will be stricken from the record and will not be a part of this proceeding. It is not responsive to the question asked by Mr. Tavenner.

(Remarks by the witness stricken from the record.)

Mr. Moulder. Mr. Tavenner, what was your question?

Mr. Scherer. He asked about his employment background.

Mr. Tavenner. We are discussing the general question of his employment background. In the course of it I asked him over what period of time Mr. Garfield was his superior because the witness had stated Mr. Garfield was his superior.

Mr. Scherer. Has he answered yet?

Mr. Tavenner. Yes, sir; he did.

Mr. Gojack, going back to the question of your employment again, you came back to the Delco Products Co., I understand, after your discharge from the Army?

Mr. Gojack. Yes, sir; that is right.

Mr. Tavenner. How long did you remain employed by the Delco Products Co.?

Mr. Gojack. I don't recall the exact month or dates, but as I stated in answer to a previous question, from about this time when I was first employed, 1937, until August of 1940, I worked intermittently at the Delco products division of General Motors Corp. because in those days we were still in a depression. I worked a couple of months, I would be unemployed, I would go on work relief, I had to fight over that at times, I had to fight to get on WPA to earn \$15 a week.

The exact dates I don't have with me. I will be happy to look up my WPA records. I have those.

Mr. Tavenner. What other employment did you have besides the employment at the Delco products division during this period?

Mr. Gojack. I did a number of odd jobs to feed my family.

Mr. Tavenner. What were the jobs?

Mr. Gojack. I remember one job I worked as a dishwasher at the Biltmore Hotel for 26 cents an hour. I resented the fact that out of my pay envelope they deducted 2 hours' pay for eating a meal.

Mr. Scherer. You did 6 cents better than I did. I only got 20 cents an hour for shelving books in a library.

Mr. Tavenner. What other jobs did you have?

Mr. Gojack. Are you referring to any specific year?

Mr. Tavenner. Yes; during the period of time that you say you were working intermittently at Delco products up to August 1940, 1937 to August 1940.

Mr. Gojack. I don't recall all the odd jobs I had. I went back to caddying for a living. I did that sometimes.

Mr. Tavenner. What else?

[fol. 550] Mr. Gojack. I recall shoveling snow in the winter time and mowing lawns and doing odd jobs for relatives.

Mr. Tavenner. What else?

Mr. Gojack. I remember working in a grocery, I remember scrubbing floors. I recall also doing volunteer work for the union in 1940 as a handbill passer. I was paid for that.

Mr. Tavenner. What union?

Mr. Gojack. United Electrical, Radio and Machine Workers of America.

Mr. Tavenner. At Dayton?

Mr. Gojack. Yes; when they were trying to organize the General Motors plant. General Motors had driven such fear into the hearts of the workers that—

Mr. Doyle. Just a minute.

Mr. Gojack. He is asking about a job and I am telling him about why I did it.

Mr. Doyle. It is a voluntary statement not responsive to the question.

Mr. Gojack. May I explain my answer?

Mr. Tavenner. I haven't asked you anything except where you worked and you are making a very long story out of it. Please tell us what other jobs you had during that period of time.

Mr. Scherer. Do you have anything to refresh his recollection?

Mr. Gojack. I am searching my mind because in the years before that I had a lot of other employment.

I worked once in a hospital 12 hours a day 6 days a week, a dollar a week and my meals, during the depression. I remember that.

Mr. Moulder. Many of us suffered during the depression and none seem to have the attitude you have toward the Congress and Government of the United States.

Mr. Gojack. How do you know what my attitude is? I have a bitter attitude toward this committee because it is out to bust the union. This hearing was set 4 days before an election at Magnavox. Right now this hearing is set to interfere in an election at the Whirlpool organization, St. Joseph, Mich., scheduled for Wednesday.

Mr. Moulder. What is your next question?

Mr. Tavenner. I am trying to get an answer to this one.

What other places have you worked at between 1937 and August 1940 when you were intermittently working at Delco Products?

Mr. Gojack. I explained I worked for WPA.

Mr. Tavenner. You need not restate any that you have stated.

Mr. Gojack. Just a moment. During this period of the depression, if I remember correctly, there were other governmental agencies that provided work. I don't recall the exact period. I remember CWA and PWA.¹ Along with most of the other unemployed in Dayton, Ohio, I worked on most of these projects and fought to get on them to earn a living and feed my family. I don't recall the exact periods, I don't recall every job I had.

Mr. Tavenner. Is that the best you can recall?

Mr. Gojack. If you will let me complete my answers, I could think of some others, probably.

¹ Reference refers to Civil Works Administration and Public Works Administration.

[fol. 551] Mr. Tavenner. The penalty is too great to wait that long.

Did you work as a research editor in newspaper indexing between 1939 and 1940?

Mr. Gojack. On a WPA project from which I graduated as a common laborer to junior clerk, to senior clerk, to research editor I worked for the WPA in Dayton, Ohio, yes.

Mr. Tavenner. What period of time was that that you performed that work?

Mr. Gojack. Mr. Tavenner, I explained I was laid off intermittently during this period and I had a number of assignments. Every time Delco Products would pick up a few months, I of course went back to private employment. Then I went back, if I recall correctly, I had 4 or 5 different classifications in WPA.

I distinctly remember having 1 job as common laborer, 1 job as a junior clerk, 1 job as senior clerk, 1 job as research assistant, 1 job as research editor, and another job I worked on the night shift for this project, assistant supervisor.

Mr. Tavenner. Where was this work of research editor performed?

Mr. Gojack. To the best of my recollection, in a building known as the annex for one of the department stores, a vacated part of the building, U. B. annex, if I remember correctly.

Mr. Tavenner. You called it the newspaper indexing. What newspaper?

Mr. Gojack. This particular WPA project was to index the Dayton Journal if I remember correctly, which is now the Dayton Journal Herald. At that time we were indexing only the morning paper.

Mr. Tavenner. That is the paper on which you were working?

Mr. Gojack. To the best of my recollection, yes.

Mr. Tavenner. Now, will you proceed, please, to give us your employment after August 1940, beginning with August 1940?

Mr. Gojack. In 1940 while still unemployed at Delco Products, but working for the union to get this plant or-

ganized I was given a job as a field organizer for the United Electrical, Radio and Machine Workers of America. I worked as a field organizer with—

Mr. Tavenner. Did that begin August 1940?

Mr. Gojack. August 1, 1940, if I remember correctly, yes, sir.

Mr. Tavenner. You had no prior employment by UE? You went there directly from the Delco Products Co.?

Mr. Gojack. As a matter of fact, I was currently unemployed, I was on layoff from Delco. Because I was one of the few workers who would get out at the plant and put out leaflets when the rest of the workers were totally fearful of doing this because of the wrath of General Motors, I was engaged to work as an organizer. They felt I had some courage in facing this giant corporation who had sought to keep a union out of its plant.

Mr. Tavenner. When was Delco organized?

Mr. Gojack. It was organized in 1940 in December. The election was held in January, if I remember. I had been working voluntarily for the local and as I applied earlier I received some very modest amounts of money for organizing the handbill distribution and participating in hand-billing.

If I remember correctly, at one point when they couldn't get workers to do it because of the fear of the corporation, [fol. 552] they hired Western Union boys and I offered to work for the same money as Western Union boys because I needed funds to supplement my WPA.

Mr. Tavenner. Will you continue with your employment by UE beginning August 1, 1940, and the various positions held by you in that organization from that time to the present?

Mr. Gojack. As I said earlier, I was engaged as a field organizer for that union about August 1, 1940. Sometime in 1942, I don't recall the exact date, I think the fall of 1942—I would have to check the records to get the exact date—the executive board of district council 9 in the Fort Wayne area where I had by that time been sent by the

national union, hired, asked the international union to give me a leave of absence to hire me as business representative of the district council because of my experience in negotiation. At that point I went off the payroll of the national union and went to work as an employee of district council 9.

Mr. Tavenner. What experience had you had in negotiating contracts in 1942, when you had been employed only 2 years?

Mr. Gojack. I had had the experience of negotiating a number of agreements in plants in Dayton, Ohio, such as the Simons, Wood & White Co., such as the Harold Seabold Pottery Co., a number of other plants in that city and I organized the plant that this hearing is set up to try to help the corporation get the union out of, the Whirlpool Corp., in St. Joseph, Mich.

Mr. Doyle. We are not interested in you or anyone else attacking the committee on that. It is not true, a voluntary statement growing out of a myth of your mind. If you will answer the questions, it will save your own time and you will get back on the job much quicker, and so will we.

Mr. Gojack. Mr. Doyle, if I may explain my answer, 3 days before this committee was scheduled to come to Fort Wayne——

Mr. Doyle. I am not interested in sitting here hearing you give expression to your bitterness against any company, nor any person, nor any group of persons. If you will answer that you will get home on the job much quicker, and so will we.

Mr. Gojack. I am only bitter at those people who seek to bust unions and when an industrial relations manager like McClaren of Magnavox announced 3 days before anyone else knew it he was bringing the committee into Fort Wayne, I say that is union busting.

Mr. Doyle. If you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful.

Mr. Gojack. Mr. Doyle, I respectfully submit this hearing is not for the purpose of investigating my political beliefs or affiliations.

Mr. Doyle. We want to know if you are a Communist and the extent to which you have been.

Mr. Gojack. I submit, sir, that you are not, for this reason—

Mr. Doyle. We are not interested in your political registration at all. We want to know if you are part and party to the international Communist conspiracy. Are you or are you not?

Mr. Gojack. Mr. Doyle, I respectfully submit that this hearing is not called for that purpose, for this reason: That you yourself said that this was a hearing called to investigate the Square D strike, a continuation of it.

Mr. Doyle. I said nothing of the sort.

[fol. 553] Mr. Gojack. One of the other Congressmen did.

Mr. Doyle. Don't say I did because I didn't.

Mr. Gojack. One of the Congressmen said this was called to complete some work of last year and had reference to the Square D strike. I was in that strike, helped lead that strike, and wasn't subpoenaed last year, so that the timing of this hearing—you could have subpoenaed me last year—proves this is set up only to—

Mr. Moulder. You did not answer Mr. Doyle's question. He asked you if you were a member of the Communist Party and the conspiracy.

Mr. Doyle. That is right. No doubt your counsel plans to, but I make it clear we are not interested in having this a forum for you venting your spleen against any employer or anyone in my country. I still feel, whether you do or not, this is the greatest country in the world that gave you birth, and I have noticed every time you got a chance you took a crack at something involving WPA or anything else.

Some of the rest of us passed out handbills to make a living, too. You ought to thank God that you are an American citizen instead of being bitter about it.

Mr. Gojack. Mr. Doyle, I am not bitter about it. I am as proud as you are of my Americanism.

Mr. Doyle. Well, show it then.

Mr. Gojack. I have a son in the United States Air Force, and he didn't wait until he was drafted, and I am proud of him and proud of this country, and I am fighting for this country right here.

Mr. Doyle. My son volunteered for the United States Air Force and lost his life in it. I hope yours doesn't lose his life.

Mr. Gojack. I am sorry for you, sir.

Mr. Moulder. Proceed.

Mr. Tavenner. The witness is not answering the Congressman's question.

Mr. Gojack. Do you want me to answer the Congressman's question?

Mr. Tavenner. He wouldn't have asked it if he didn't want the answer.

Mr. Gojack. He said something about expecting you to ask it later on.

Mr. Doyle. You state it whenever you think it is proper. I did not mean to butt in.

Mr. Tavenner. That is perfectly all right, sir.

Since you have raised this question about volunteering for service, did you volunteer for service during World War II?

Mr. Gojack. No, sir; I did not.

Mr. Tavenner. You were classified 1-A by your local board?

Mr. Gojack. Yes, sir; I was.

Mr. Tavenner. Did you appeal it for deferment?

Mr. Gojack. Sir, I did not personally.

Mr. Tavenner. Who did you have to do it?

Mr. Gojack. At the time I received my classification in 1-A, I applied, I went to Dayton, Ohio, when I was called. I took an examination, a physical examination and I passed that examination.

Mr. Scherer. Just a minute. It was a simple question. Who did you have appeal it? He said he didn't. He had somebody do it for him. You were asked who it was. [fol. 554] Mr. Gojack. I am sorry, but I will have to answer the question fully.

Mr. Moulder. You answer the question and make any brief explanation you wish to make.

Mr. Gojack. I really don't know, sir. Let me explain my answer.

Mr. Tavenner. Would it surprise you if I tell you it was Mr. Fitzgerald, president of the United Electrical, Radio and Machine Workers?

Mr. Gojack. Not at all. That is what I want to explain.

Mr. Tavenner. Why didn't you tell us it was him if you knew?

Mr. Gojack. I didn't know until you mentioned his name. I told you I didn't know. As I explained, when I was first classified 1-A, I went for my examination in Dayton, Ohio, transported to Dayton, Ohio, to the induction center; I passed the examination, and at the end of the table was given a choice of service. And I went up to one fellow and I said I was in the Army the last time, I will take the Marines this time.

As far as I was personally concerned, I was volunteering for the service. However, I wasn't called, if I remember they were keeping fathers out about that time. Subsequent to that when I was reclassified and called up again, our union organization held a conference, discussion was held at the general executive board meeting, if I recall correctly, about some of the people heading the organization needing to be deferred for the reason that we had contracts in plants which were producing one-fifth of the war material for the prosecution of World War II, and that in the interests of maintaining harmonious relations in our plants and maintaining the no-strike record of our union, that we were unique—it was cited by President Roosevelt under Secretary of War Patterson and others—that some of the leaders of this union would have to refrain from volunteer-

ing and would have to seek deferment because of their experience in negotiating and the need to have them avoid wildcat strikes and carry on the record of this organization in keeping the production going.

And I remember having discussed with the officers of our union and I objected to this on personal grounds because personally I didn't want to be in that position, but they convinced me that the decision of the organization should hold, that in the area I was working in I had had the most experience in negotiation and the record was clear that I had personally averted many strikes in our plants, in our district. We had none in that entire district during the entire war, not even any wildcat strikes.

For that reason, the officers, as you say, President Fitzgerald wrote the letter just as Jim Carey, who is secretary of the CIO, who was my age, himself, was deferred for sitting at a desk job here in Washington.

They felt that people actually in the field should be given the same consideration for remaining at their posts.

Mr. Tavenner. In December 1942, just a little before you were given the 1-A classification, you were prominent and active in calling for the second front, were you not?

Mr. Gojack. I wouldn't say I was prominent and active. All I recall about that was there was a picture taken with the leaders of the CIO, including some people who are now in the A. F. of L. and officers of UAW-CIO, Amalgamated Clothing Workers, CIO, Hosiery Workers, now A. F. L., [fol. 555] the Packinghouse Workers, CIO, Steelworkers, CIO.

Mr. Tavenner. I am asking you about yourself.

Mr. Gojack. I was included in that group at a meeting in which someone had a banner that said something about the second front. The IUE-CIO, a rival organization, has been using that picture and circulating it throughout the country just like somebody circulating this pamphlet about Senator Murray in the campaign.

Mr. Tavenner. I have it in the Daily Worker, August 7, 1942. Will you examine it and state whether that is the photograph to which you refer?

Mr. Gojack. Just like the Daily Worker caption on the pamphlet against Senator Murray.

Mr. Doyle. We are not asking you about Senator Murray.

Mr. Gojack. This is the same propaganda.

Mr. Doyle. You are taking advantage and making propaganda speeches against the A. F. of L. and CIO and somebody else. Just answer for yourself, please.

Mr. Tavenner. Is that the photograph to which you have referred?

Mr. Gojack. This is the photograph that I described that included officers of many CIO and now A. F. L. unions in Fort Wayne. I was one of them.

Mr. Tavenner. I desire to offer the exhibit in evidence, copy of the Daily Worker, and ask that it be marked "Gojack Exhibit No. 1," for identification purposes only and to be made a part of the committee files.

Mr. Moulder. It is so ordered.

Mr. Gojack. I want to further explain that I never saw this picture in the Daily Worker. The first time I saw it was in IUE-CIO propaganda and I have a copy of it here just like the material someone put against Senator Murray, the same purpose, same smearing.

Mr. Tavenner. Mr. Gojack, do you recall whether or not after Mr. Fitzgerald requested your deferment that you were granted a 2-A classification on June 21, 1944?

Mr. Gojack. I don't recall the exact date.

Mr. Tavenner. Our information is that that is correct.

Mr. Gojack. I am not denying it.

Mr. Tavenner. And that you were reclassified 1-A on January 10, 1945.

Mr. Fitzgerald appealed again on January 15, 1945. Do you recall that?

Mr. Gojack. I don't recall the exact dates.

Mr. Tavenner. Were you given an induction order on January 18, 1945, directing you to report for service?

Mr. Gojack. I don't recall, sir. As I said earlier, there were, I had been reclassified, classified, I was in and out. The regulations changed frequently and I was involved in the business of the organization seeking a deferment for me.

Mr. Tavenner. Our investigation showed that the induction order was withdrawn after the appeal had been granted. However, you were again classified 1-A on April 25, 1944. This time Mr. Julius Emspak appealed. Do you recall that?

[fol. 556] Mr. Gojack. I don't recall the exact dates or the persons involved.

Mr. Tavenner. As a result of that appeal, you were granted a 2-A classification on July 7, 1945. That is correct, isn't it?

Mr. Gojack. I am not certain. I don't recall the exact dates.

Mr. Tavenner. Finally, a 4-A classification in October of 1945. Does that meet with your recollection?

Mr. Gojack. Sir, I don't recall the exact dates or the exact order in which my classification was changed. It was changed. It was changed far more frequently than that, to my recollection, including from the time when I first went down to take the examination and passed it.

Mr. Tavenner. You raised considerable question here about volunteering for action rather than waiting for induction.

Mr. Gojack. That was with respect to my son.

Mr. Tavenner. Not you? Your son?

Mr. Gojack. The specific reference I made to volunteering was to my 18-year-old son who volunteered.

Mr. Tavenner. That doesn't apply to you.

Mr. Doyle. Give him my compliments.

Mr. Gojack. I volunteered for the United States Army back in 1935 and I tried to get in the service generally in the war.

Mr. Moulder. That has been covered.

Mr. Tavenner. It doesn't seem that you have taken any action here to try to get in World War II as far as these records are concerned.

Mr. Gojack. You don't have all the records. I don't have the record where I passed my examination and took my choice of service and then wasn't called.

Mr. Tavenner. As a result of the appeal that was given in your behalf?

Mr. Gojack. It was much before that.

Mr. Tavenner. What date?

Mr. Gojack. I don't recall the time. It was early in the war, though, sir. It was later on that the union adopted a policy about deferments.

Mr. Tavenner. You weren't classified 1-A until 1943, October 27, 1943.

Mr. Gojack. Do you have a record of my medical in Cincinnati?

Mr. Tavenner. An appeal was made very shortly after that.

Mr. Gojack. If you have a record of my medical there, it will give you the chronology of it.

Mr. Tavenner. How old were you when you were given a 1-A classification in 1943? I failed to make a note of the date of your birth.

Mr. Gojack. August 15, 1916.

Mr. Tavenner. That is approximately 37 years of age.

Mr. Gojack. Yes, sir.

Mr. Tavenner. Let's go back again to the period that you were employed by the UE. The last that you told us was that in 1942 you were hired as business agent by the executive board of district No. 9. How long did you serve in that capacity?

Mr. Gojack. Until the fall of 1943 at which time I was elected president of district council 9, if I remember correctly.

Mr. Tavenner. How long did you remain president of district 9, the council of district 9?

[fol. 557] Mr. Gojack. I have been elected annually, re-elected annually, for every year since that time on a number of occasions in contested elections, with opponents, but I received the majority vote in our district council meeting in which the elections take place annually, in the fall.

Mr. Tavenner. Do you still hold that position?

Mr. Gojack. Yes, the last reelection was in the fall of 1954.

Mr. Tavenner. What other positions have you held in the union besides the ones you have told us of?

Mr. Gojack. According to the constitution of our union, by virtue of that office of district council president, I am automatically a general vice president of the national union and a member of the general executive board. And I have held that office concurrent with the district council position in accordance with the constitution of our organization.

Mr. Tavenner. I think now I shall ask the question that the Congressman asked you a few moments ago: Have you been a member of the Communist Party at any time while occupying any of the positions you have enumerated in the union?

Mr. Gojack. In 1949 and 1950 and 1951 and 1952 and 1953 and 1954, on August 24, 1954, I signed an affidavit which said:

I am a responsible officer of the union named below, the UE. I am not a member of the Communist Party or affiliated with such party, I do not believe in and I am not a member of nor do I support any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Mr. Scherer. Mr. Chairman, I ask that the witness be directed to answer Mr. Tavenner's question because obviously his answer was not responsive to the question.

Mr. Moulder. That is correct. The witness is directed to give a direct answer to the question propounded by counsel. As I recall, he asked you whether or not at any time while you have been employed by the UE in any official

capacity, were you at any time a member of the Communist Party.

Mr. Gojack. Mr. Moulder, I don't believe that this committee has any right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting.

Mr. Tavenner. The answer is not responsive to the question.

Br. Gojack. I will explain why. If you want to know my political beliefs, you can check the records in Allen County, Ind.

Mr. Moulder. The fact that you refuse to answer that question truthfully—would that have the effect of busting the union?

Mr. Gojack. Every time I cast a ballot in the primary election I have had to register my party preference and those records are available to you and that convinces me you are not interested in my political affiliation.

Mr. Moulder. You were asked a very simple question as to whether or not you had ever been a member of the Communist Party while you were employed by or actively engaged in any official capacity for the UE.

Mr. Gojack. I don't believe that Public Law 601—

Mr. Moulder. You can answer that.

Mr. Gojack. Gives this committee the right to inquire into my—

Mr. Doyle. I do not mean to interrupt you again, but you are proceeding again to read that prepared statement. [fol. 558] Why don't you come out for the right and give us a forthright answer, an honest-to-God answer, and answer the question promptly and quickly?

You know very well whether or not you have been a member of the Communist Party. That is our question.

Mr. Gojack. My forthright answer is this.

Mr. Doyle. You have taken about 3 minutes already trying to get out of answering that question.

Mr. Gojack. I haven't been hedging. You Congressmen have been taking the floor.

Mr. Moulder. You said 1949, 1950, 1951, 1952, 1953, and 1954—

Mr. Doyle. Down to August 24, 1954.

Mr. Moulder. In 1948 were you a member of the Communist Party?

Mr. Gojack. This affidavit is still on file. I don't believe the resolution which put you up in business, under the first amendment to the Constitution, gives you the right to inquire into my political beliefs.

Mr. Moulder. You have no hesitancy in answering the question as to 1949. That was after the law compelled you to sign this affidavit. Prior to that time, say 6 months prior to 1948, were you then a member of the Communist Party?

Mr. Gojack. Mr. Congressman, because these hearings were set up to interfere in labor board elections in Magnavox and Whirlpool—

Mr. Moulder. Do you refuse to answer the question?

Mr. Gojack. No, if you let me answer the question I will answer it. I will give you the answer in my own way.

Mr. Moulder. Were you a member of the Communist Party in the year 1948?

Mr. Gojack. Look—it is not a simple question. When you have got paid liars like Matusow around here and you had a fellow from Ohio that was a lunatic that testified in one case, and this committee—

Mr. Moulder. You can tell the truth.

Mr. Gojack. This committee took the word of a lunatic and tried to frame some people, and Cecil Scott and Representative Walter—

Mr. Tavenner. Cecil Scott never testified.

Mr. Gojack. The chairman of the committee said Cecil Scott was a lunatic and altered a document before this committee and Walter said he would recommend the matter be referred to the United States Attorney.

Mr. Tavenner. That doesn't excuse you from telling the truth. What is the truth? Were you a member of the Communist Party at any time before you became a UE employee or since?

Mr. Gojack. When you have a paid liar like Matusow—

Mr. Tavenner. He is not testifying about you.

Mr. Gojack. Matusow tells in his revelations about going into Dayton, Ohio, and meeting with the personnel manager—

Mr. Scherer. I ask that this diatribe be stopped, Mr. Chairman. I don't have to take that from you even if the chairman—it is a simple question.

Mr. Chairman, I ask that you direct him to answer the question. May I ask a question?

Were you ever a member of the Communist Party? Let's get the record straight because I want to get this record just right. Were you ever a member of the Communist Party?

Mr. Gojack. I am going to answer that question in my own way.

Mr. Moulder. The question calls for a civil answer.

[fol. 559] Mr. Gojack. Not while you have paid liars like Matusow and Strunk, who said this lad was running a strike in a guided missile plant in Detroit. I was involved in that strike. It is not a guided missile plant, in the first place. I tried to break that strike on that paid liar's testimony.

Mr. Scherer. I am directing you to quit talking and answer the question, and if you don't you are in contempt.

Do you understand?

Mr. Gojack. I think it is up to the courts to decide who is in contempt, not you. We haven't reached a stage in this country where a Moulder or a Scherer can tell who is in contempt. I have some faith in the courts of this land yet.

Mr. Moulder. The Chair directs you to answer the question propounded to you by Mr. Scherer. You have not answered the question, I understand.

Mr. Tavenner. Let's get together on the question because that is important.

Mr. Scherer. Mr. Chairman, may I have the floor?

Mr. Moulder. Yes.

Mr. Scherer. Were you ever a member of the Communist Party?

Mr. Gojack. My answer to that question is that since 1949 I have signed these affidavits, one on file now. Mc-

Carthy had an investigation, which the Department of Justice said—

Mr. Scherer. Just a minute.

Mr. Chairman, I ask that you direct him to answer my question.

Mr. Moulder. The Chair directs you to answer the question.

Mr. Gojack. I am going to answer your question if you will be patient.

Mr. Moulder. When?

Mr. Gojack. If you will stop interrupting and let me answer, I will.

Mr. Moulder. How long do you think it will take you to answer?

Mr. Gojack. I think I can do it in about a minute and a half.

Mr. Moulder. That question calls for a simple "Yes" or "No."

Mr. Gojack. Not when you have paid liars like Matusow around who frame these hearings.

Mr. Moulder. That is enough.

Mr. Gojack. I think the first amendment to the Constitution protects me in my right to challenge this committee asking me any questions about my political affiliation or beliefs and especially when it is used for union busting.

Mr. Moulder. Do you claim the privilege under the fifth amendment now?

Mr. Gojack. No; I have not.

Mr. Moulder. The Chair directs you to answer the question: Were you ever a member of the Communist Party?

Mr. Gojack. I am saying the first amendment to the United States Constitution gives me the right to challenge your committee using this hearing for union busting and for strike breaking as in the case of this paid liar, Strunk, who lied about the Square D strike.

Mr. Moulder. Do you decline to answer the question?

Mr. Gojack. I will answer the question my own way.

Mr. Moulder. Do you decline to answer the question for the reasons you have just stated?

[fol. 560] Mr. Gojack. For the reason that the first amendment—

Mr. Moulder. Do you decline to answer for the reason of the first amendment; is that right?

Mr. Gojack. No; for the reason that the first amendment of the United States Constitution—

Mr. Moulder. That is enough. Proceed.

Mr. Gojack. I want to give my explanation.

Mr. Scherer. Mr. Chairman, I insist that you ask counsel to proceed now.

Mr. Moulder. Proceed. However, I want to—

Mr. Gojack. You are not permitting me to give my explanation of the answer.

Mr. Moulder. You have not attempted to answer the question. You have been making a speech like an ordinary soapbox Communist orator.

Mr. Gojack. I haven't had the opportunity to vote myself a \$10,000 raise.

Mr. Moulder. Let us proceed.

Mr. Gojack. I want the record to show I have not been given an opportunity to make an explanation.

Mr. Moulder. Are you refusing to answer the question because Congress voted itself a \$10,000 raise?

Mr. Gojack. No; but I resent—and not with bitterness against my Government because I love my Government, although I dislike some of the people currently in control of it from Charlie Wilson on down.

Mr. Moulder. Can you—

Mr. Gojack. Some of these other corporation people here are here for the sole purpose of using this hearing to bust our union.

Mr. Doyle. You have made a speech, so your members will know what you have said before the committee.

Mr. Moulder. I want to resubmit the question whether or not you were a member of the Communist Party in the year 1948 or at any time prior to the time you signed the first affidavit referred to in your testimony.

Mr. Gojack. My answer to that is—

Mr. Moulder. You answered the question as to 1949, 1950, 1951, 1952, 1953, and 1954.

Mr. Doyle. No, he has not. All he said was he swore to an affidavit. I do not take cognizance that the affidavit is an answer to the question.

Mr. Moulder. Were you then a member of the Communist Party in 1948, at any time during the year 1948?

Mr. Gojack. The purpose of this hearing clearly in my mind is not legislative in character.

Mr. Moulder. Do you decline to answer?

Mr. Gojack. This hearing is designed to influence an election, designed to smear me. You have no right as a committee—

Mr. Moulder. You are arguing with us. You have not answered the question, you have declined to answer it.

Mr. Gojack. My answer to the question is when you have paid liars like Matusow, paid liars like Strunk, and paid liars like this lunatic, Cecil Scott, around—

Mr. Doyle. That is the fourth time you have given those as your reasons.

[fol. 561] Mr. Gojack. There may be others.

Mr. Doyle. Don't repeat those same reasons. Start in on some new ones, if you have them.

Mr. Gojack. I think my reason is about the best one I can think of because I love the United States Constitution and I think that the first amendment ought to protect me, particularly insofar as the first amendment doesn't give or rather guards against the kind of an operation this witch-hunting committee is engaged in.

Mr. Moulder. Do you claim the privilege under that amendment and decline to answer? Do you decline to answer by claiming the privilege under the first amendment?

Mr. Gojack. Yes.

Mr. Scherer. Let's go to the next question.

Mr. Moulder. All right.

Mr. Doyle. It is 4:30, Mr. Chairman. We talked about adjourning.

Mr. Gojack. May I finish my explanation? I haven't finished yet. I mean in regard to this paid liar Matusow, this liar Strunk, Cecil Scott—

Mr. Scherer. I ask that we proceed with the next question. Matusow was a Communist.

Mr. Gojack. Also a union buster. He was your boy then. You loved him then.

Mr. Moulder. I want to ask you one question: Are you now a member of the Communist Party?

Mr. Gojack. I have this affidavit on file and that affidavit speaks for itself.

Mr. Scherer. Wait a minute. I ask that you direct the witness to answer your question. Let's keep this record straight. I am going to make a motion to cite him for contempt.

Mr. Moulder. The Chair directs you to answer the question "Yes" or "No": Are you now a member of the Communist Party?

It is a very simple question calling for a very simple answer.

Mr. Gojack. I swore to an affidavit.

Mr. Moulder. What was the date of the affidavit?

Mr. Gojack. August 24, 1954.

Mr. Moulder. I am referring to this date.

Mr. Gojack. This covers this date. This affidavit is still on file.

Mr. Doyle. It does not.

Mr. Gojack. It does.

Mr. Doyle. The chairman asked you whether or not you are a member of the Communist Party today, the date you are sitting in that chair.

Mr. Gojack. I am telling you this affidavit is on file here in Washington and this affidavit, signed and notarized says I am not a member of the Communist Party or affiliated with such party and it also has the reference in there to not believing in or not being a member of nor supporting any organization that believes in or teaches the overthrow of the United States by force or by any illegal or unconstitutional methods. That affidavit is on file and in effect.

Mr. Scherer. Who do you think you are fooling? I ask you, Mr. Chairman, that you direct him to answer the question.

Mr. Moulder. The Chair requests that you answer the question as to whether or not you are now a member of the Communist Party.

[fol. 562] Mr. Doyle. Mr. Chairman, I submit it is not a matter of requesting, that you as chairman under the law and under your assignment are directing him to answer the question.

Mr. Moulder. The Chair directs you to answer.

Mr. Gojack. Under the first amendment to the Constitution you have no right to even have this hearing.

Mr. Doyle. That is your opinion.

Mr. Gojack. Yes, and I am entitled to my opinion in this country still, though we are getting dangerously close to the point when Representative Walter can tell people how to vote in an election.

Mr. Doyle. Why do you decline to give an honest answer? You don't suppose we will take that affidavit as the answer to this question, do you?

Mr. Gojack. I am not going to cooperate with union busters. My union is on record as the UAO-WAC, not a bad union, to fight back against McCarthys, McCarrans, Jenners, and Veldes.

Mr. Moulder. Do you want to answer or do you decline to answer the question that has been asked? Are you now a member of the Communist Party?

Mr. Gojack. I am letting the record speak for itself.

Mr. Scherer. Let's proceed. You have given him every opportunity.

Mr. Tavenner. Do you want to go ahead any further this afternoon? This is a good breaking place.

Mr. Moulder. The committee will stand in recess until 10 o'clock in the morning, at which time, Mr. Gojack will be recalled.

(Whereupon, at 4:45 p.m., the committee was recessed, to reconvene at 10 a.m. Tuesday, March 1, 1955.)

[fol. 563]

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE
FORT WAYNE, IND., AREA

Tuesday, March 1, 1955

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
UN-AMERICAN ACTIVITIES,
Washington, D. C.

Public Hearing

The subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10 a.m., in the caucus room, 362, Old House Office Building, Washington, D.C., Hon. Morgan M. Moulder (chairman) presiding.

Committee members present: Representatives Morgan M. Moulder (chairman), Clyde Doyle, and Gordon H. Scherer.

Staff members present: Frank S. Tavenner, Jr., counsel; Donald T. Appell, investigator; and Thomas W. Beale, Sr., chief clerk.

Mr. Moulder. The committee will be in order.

The committee wishes to announce Mr. Cover is excused as a witness.

Will you call Mr. Gojack.

TESTIMONY OF JOHN THOMAS GOJACK, ACCOMPANIED BY
COUNSEL, FRANK DONNER—RESUMED

Mr. Tavenner. Mr. Gojack, in the course of the hearing at Dayton in September 1954, testimony was received that during the progress of the Univis Lens strike in 1948 in Dayton, the Communist Party sent to Dayton certain of its functionaries to aid and counsel the strike committee which had been set up by the union to conduct that strike.

Do you have any knowledge of your own of the manner and extent of Communist participation in that strike?

Mr. Gojack. In 1948, to the best of my recollection, I was working in various areas of Indiana and Michigan where UE locals affiliated with District Council 9 are located. Upon occasion down through the years since I left Dayton in 1941, I visited my family. I have brothers and sisters residing in Dayton and a father there who is a patient in the chronic patients hospital home I visited upon occasion. I never had occasion to be near the Univis Lens strike or to consult with anyone actually in that strike.

I read about it in the newspapers and that is all the information I have, what I have read in the press, commercial press and union press.

Mr. Moulder. Were you in Dayton during the Univis strike?

[fol. 564] Mr. Gojack. I don't even recall how long the strike was. I might have been in Dayton visiting my father or brothers and sisters some time, but I have no recollection of it.

Mr. Scherer. You would remember, I am sure, if you had been in Dayton at the time of the Univis Strike because there was a great deal of violence connected with it. Was not that the strike in which the National Guard was called out, Mr. Tavenner?

Mr. Tavenner. Yes, sir.

Mr. Gojack. Mr. Scherer, I am positive I was not there at the time of the alleged violence, for if I had been I would have been on that picket line just as I have walked on CIO and AFL picket lines as recently as a few weeks ago. As an active trade unionist I never pass up an opportunity to help any union that is in struggle for its right to strike or its right to economic gains. I participated in a number of them.

Mr. Scherer. There were Communists on that picket line.

Mr. Gojack. I was not in Dayton at the time or nowhere near the Univis Lens strike. If I was in Dayton during the strike it must have been when the strike was at its quite early stages, but I am not sure of that.

Mr. Tavenner. Did you participate in any manner in the conduct of that strike?

Mr. Gojack. None whatsoever.

Mr. Tavenner. I am not speaking of the mere question of walking the picket line. That is a minor phase of it.

Mr. Gojack. I think walking a picket line is a major part of the strike.

Mr. Tavenner. It wasn't in that strike, according to the testimony we had.

Mr. Gojack. It is in every strike I have been engaged in.

Mr. Tavenner. I am speaking of the plans that were formed by the strike committee for the discussion of that strike. Did you have anything to do with that?

Mr. Gojack. No, I didn't, sir.

Mr. Tavenner. According to the testimony, organizers from the UE were sent into the area to participate in the conduct of that strike from various areas. Were any sent from your district?

Mr. Gojack. There were no organizers from the UE district council 9 who were assigned to district council 9 who were loaned or transferred or sent to the Univis Lens strike. None whatsoever, sir.

Mr. Tavenner. Were you acquainted with Mr. Arthur Garfield?

Mr. Gojack. At what period, sir?

Mr. Tavenner. During 1948.

Mr. Gojack. I don't recall. I knew Mr. Garfield, I kept in touch with him, he was in it, I knew him before the war, I kept in touch with him when he was in the Pacific and Philippines, I was at his wedding when he came back from the service. I don't remember 1948.

Mr. Tavenner. Did you know him in 1948?

Mr. Gojack. I knew of him. Whether I met Arthur Garfield in 1948 or not, I don't recall. I rather doubt it.

Mr. Tavenner. Had he been assigned as an organizer in your district prior to 1948?

That is, district No. 9.

[fol. 565] Mr. Gojack. No, Arthur Garfield was never assigned to district council 9 any time I was there.

Mr. Tavenner. Well, apparently you did become acquainted with him later.

Mr. Gojack. Sir, I knew Arthur Garfield in 1940. He organized the shop I worked in. I came to know him personally as an associate in our union work. As I testified, I kept in touch with him occasionally when he was in the service. As a matter of fact, my wife baked cookies for him.

Mr. Scherer. Why were you in doubt a few minutes ago about your knowing him in 1948? You indicate you may have known him in 1948. Now you tell us you have known him since 1940.

Mr. Gojack. Mr. Scherer, I was not in doubt and I resent the implication here that I am in doubt just as much as I resent the evil insinuations brought out by Mr. Tavenner and Members of Congress here yesterday which resulted in the radios of my community suggesting something insidious in the fact that a previous witness, Miss Julia Jacobs, happened to be a house guest of my wife at a period I was mainly gone. My wife has a brother in the Fort Wayne Hospital. Her father is a respected, notable minister in a nearby community, and I resent this.

I resent it deeply and I think that it ill becomes and ill behooves a committee of Congress to allow its counsel to cast these evil insinuations and prey upon suggestive matter such as this.

Mr. Scherer. It was the witness, your friend Julia Jacobs, who brought it out. It wasn't Mr. Tavenner. I remember the testimony very well. She brought it out, volunteered the information, not this committee.

Mr. Gojack. The record will show that the counsel and the committee played upon the theme that she was a guest of the Gojack family, kept repeating the address, for whatever evil insinuations I don't know happened to be in your minds. I think it is dirty.

Mr. Moulder. Mr. Gojack, I cannot think of anything, either, that you can construe as evil as a result of her being a guest or staying in your house, other than your own conclusions that you might draw from it.

Mr. Gojack. You folks know how you feed your things to the press. You know how this committee stages its affairs.

Mr. Moulder. Like Shakespeare, methinks you protest too much about it. I saw nothing evil about it. They were interrogating her about the address on the application for a passport. Any conclusions you have reached about it are your own. It just related to the application for the passport.

Mr. Gojack. I resent it.

Mr. Tavenner. The only purpose for asking the question was the witness had testified she did not live in Fort Wayne, that she lived at some other place in the State of Indiana, and we were wondering why the Fort Wayne address had been given on the application for passport. It appeared to be a false statement. It was the only purpose in the world, there was no personal relationship, as you indicated, that we had in mind at all. You are the only one I know of that suggested it.

[fol. 566] Mr. Gojack. I am happy to hear that, Counsel, and I think that I am just as entitled to the resentment I drew from that just as you were to my remark yesterday that all of you folks up there voted yourself a \$10,000 raise and it ill behooves you to make snide remarks about wages paid to union office secretaries.

Mr. Moulder. I am sorry you brought that up again. That will just about make me break even as a Member of Congress, almost.

Mr. Gojack. You might treat your witnesses better, too.

Mr. Moulder. That is not relevant to this hearing.

Mr. Scherer. The only trouble you got yourself in was your own contemptuous conduct yesterday and it is well planned. We have been baited before by the Communists and union leaders who associate themselves with that group. It has been followed all over the country. So we expected you to do what you did. You do it as a show for the people back home.

Mr. Gojack. You stage your shows with lunatics like Cecil Scott and paid liars like Matusow and Strunk.

Mr. Moulder. Mr. Doyle, a member of the subcommittee, is excused. It is necessary that he be absent from the hearing for approximately 20 minutes because of necessity of his appearance with Congressman Walter before the Committee on Rules.

(Representative Clyde Doyle left the hearing room.)

Mr. Tavenner. I believe, according to your earlier testimony, you resided in Fort Wayne in 1946, is that correct?

Mr. Gojack. That is correct, sir.

Mr. Tavenner. While you were residing in Fort Wayne, was there a strike conducted in General Electric by a local of the UE?

Mr. Gojack. Yes, sir; there was.

Mr. Tavenner. What was the number of the local?

Mr. Gojack. It was at that time UE Local 901.

Mr. Tavenner. Did the Communist Party participate in any manner in the conduct of that strike?

Mr. Gojack. That strike was voted by the membership of local 901. The membership voted upon a plan of strike action which included the establishment of committees for various activities in the conduct of the strike.

Each chairman of the various strike committees made up what was known as a strike strategy committee. That strike strategy committee met every morning in the office of UE Local 901. The entire conduct of that strike was in the hands of that strike strategy committee, the various stewards and picket captains meetings that were called and also the special membership meetings that were called.

Mr. Tavenner. Who was the secretary of local 901 at that time?

Mr. Gojack. If I remember correctly, Miss Bertha Scott.

Mr. Tavenner. Were you a member of the strike committee?

Mr. Gojack. No, sir; I was a member of another GE local at the time, but I served in a helpful capacity assisting the local in the conduct of the strike.

Mr. Tavenner. Did you attend its meetings?

Mr. Gojack. Some of them, sir.

Mr. Tavenner. Do you recall attending a meeting on January 16, 1946, at which you presented a letter that had been written to you by the secretary of the Communist Party?

Mr. Gojack. I don't recall presenting a letter myself. [fol. 567] I recall 1 incident in this strike, 2, as a matter of fact; 1 in which the local had received a communication with an offer from someone to give them copies of this paper or to furnish them to people active in the strike. There was quite a discussion about this. At one strike strategy committee meeting as I recall, as a matter of fact, a heated discussion. The strike strategy committee took a vote on it. I was not a party to the vote. I was not a party to the discussion other than I was asked a question about this paper and as a matter of fact, I recall this very clearly. Someone raised the question about does reading this so-called Communist paper, I believe it was the Worker, or the Daily Worker, does that make you a Communist. I remember in response to a question saying that, well, I read the Wall Street Journal and that didn't make me a capitalist and that I personally read everything I could. I only had seven grades of formal schooling and I gave myself an education after that by reading a lot.

I have read a lot. I am sorry to say that there are certain things in this country that since the rise of McCarthy are now forbidden reading material and I think that is a sad thing for this country.

Mr. Moulder. I don't think you need to apologize about your education. You are a very brilliant man.

Mr. Tavenner. Do you recall whether or not the communication with respect to the making available of the Daily Worker to your strike committee was addressed to you?

Mr. Gojack. Sir, I don't recall that at all and I might say this: that the lady who took those minutes of that meeting didn't like me at all and on many occasions I found that the minutes she took completely distorted my position in meetings. As a matter of fact, the closest supporter of

this woman, one Dallas Smith, who was involved in another incident where some Communists gave them coffee for the strike, and I will be glad to give you the details on the use of Communist coffee in the strike, that this Dallas Smith later went on to break this union and later was engaged by the General Electric Co. and is today an employee in the personnel office paid off for helping to break that union.

That union in that plant happens to be in a very weakened position with less than 500 members out of 9,000 workers in that shop, paying dues into the union.

It was the activities of people like Dallas Smith who was paid off by the company and this woman who distorted the minutes who are responsible for that.

Mr. Scherer. Was this woman who you say distorted the minutes a fellow union member at the time?

Mr. Gojack. She never worked in the shop. She was hired as a secretary. She was then elected to secretary.

Mr. Scherer. Of the union?

Mr. Gojack. Of the union.

Mr. Scherer. You claim she was an employer's stooge for the purpose of sabotaging you?

Mr. Gojack. I have no evidence to that effect. I merely stated my belief, my knowledge, that she never passed up an opportunity to do a job on me and how she colored her minutes.

Mr. Tavenner. Now, you have charged Miss Scott with altering the minutes or improperly reporting them because you see before me a typewritten statement. Is that the reason you are doing it? You are anticipating that I am [fol. 568] going to read you the minutes of that meeting?

Mr. Gojack. I don't know how many paid liars you have working for you. I know of three of my own knowledge.

Mr. Tavenner. Will you answer the question?

Mr. Gojack. As to what?

Mr. Tavenner. As to whether or not the reason for your attacking Miss Scott is that you see that I have before me what appears to be a copy of the minutes?

Mr. Gojack. I don't see what you have before you. You have all kinds of papers before you.

Mr. Tavenner. You have told us that the matter was presented to a meeting, and that the account of it was improperly stated by Miss Scott—before I have given you any facts in regard to it at all. Have you seen it before?

Mr. Gojack. I know it from other reasons.

Mr. Tavenner. Have you seen it before?

Mr. Gojack. No, I know this because Mr. Dallas Smith and the group with him who are members of the IUE-CIO, the only McCarthyite union in America, a union that co-operates with you, you had material here yesterday that the IUE-CIO stole from our union office. You are using material stolen by a rival union. This same union, this same clique, Dallas Smith, who is now working for General Electric as a boss, have used and distorted what happened during this strike.

Mr. Scherer. What union did you call a McCarthyite union?

Mr. Gojack. IUE-CIO.

Mr. Tavenner. Let's proceed.

Mr. Gojack. I haven't finished my answer.

Mr. Tavenner. You are not answering the question. You are arguing extraneous matters.

Mr. Gojack. I am explaining that I know of this distortion because the IUE-CIO and Dallas Smith had used this in their attempts to wreck the union in 1949 and subsequent to that.

Mr. Tavenner. You are saying the statement is false before you have heard me make any reference to it.

Mr. Gojack. I am saying it is false because the IUE-CIO have used this repeatedly.

Mr. Tavenner. You have stated you have never seen it before.

Mr. Gojack. I never have—

Mr. Tavenner. In other words, you are swearing something false which you haven't seen and as to which I have not yet asked you a question.

Let me ask you the question and see whether you say it is false: According to the minutes of January 16, 1946, which I quote:

A letter was read addressed to Brother Gojack from the secretary of the Communist Party stating that they would like to donate 100 copies of the Worker, weekly paper of the Communist Party.

Is that true or false?

Mr. Gojack. As I recall that meeting—

Mr. Tavenner. Will you answer the question, please, and then you may explain your answer. Is it true or false?

Mr. Gojack. I don't recall whether I read the statement. The secretary read the letter first, as I remember.

Mr. Tavenner. That isn't an answer to the question.

[fol. 569] Mr. Gojack. They asked me if I had a communication. It so happened that I had received one.

Mr. Tavenner. You had received it. That is the question I have been trying to get you to answer. From whom did you receive it?

Mr. Gojack. I don't know.

Mr. Tavenner. Wasn't it from the secretary of the Communist Party?

Mr. Gojack. I don't know.

Mr. Tavenner. Who was the secretary of the Communist Party of the State of Indiana at that time?

Mr. Gojack. I don't know.

Mr. Tavenner. Are you acquainted with Elmer Johnson?

Mr. Gojack. Let me explain my other answer—I don't know.

Mr. Tavenner. Are you acquainted with Elmer Johnson?

Mr. Gojack. I will get to that later. I am going to explain my other answer. The reason I don't know whether this communication came from any Communist, I have received communications from the IUE-CIO and I have seen this McCarthyite union forge communications allegedly from the Communist Party for just such purposes as this.

Mr. Scherer. You are charging another union with forgery now?

Mr. Gojack. Just the same kind of forgery your lunatic Cecil Scott used.

Mr. Scherer. He has mentioned Cecil Scott. Cecil Scott testified before this committee I think 4 years before I became a Member of Congress, but it so happens I must say in defense of Cecil Scott, that what he said in that executive testimony has been corroborated over and over again by many competent witnesses. And the testimony of Cecil Scott was never released by this committee. I have to say that.

Mr. Tavenner. You made an explanation as to the IUE forging documents. IUE was not in existence in 1946, was it?

Mr. Gojack. No; but people who later created this McCarthyite outfit were active in 1946 laying the groundwork for it. Dallas Smith and Bertha Scott were some of those people.

Mr. Scherer. Whatever you say about the IUE, at least I am of the opinion that it is not Communist dominated, no matter how viciously you attack it and charge it with forgery, et cetera.

Mr. Gojack. Why were 14 officers of the IUE-CIO fired at Sperry a year ago as security risks and haven't gotten their jobs back yet? They were some of your anti-Communist's friends. As a matter of fact, right today this committee is helping two security risks at Magnavox, by your work here. You are helping two people declared security risks, and are security risks today.

Mr. Moulder. Tell us who these individuals are.

Mr. Gojack. William Ives and Leroy Williams, who were then president and chief steward of UE Local 910 at Magnavox were declared security risks.

Mr. Tavenner. Why?

Mr. Gojack. I don't know. Why were 250 people declared security risks at Republic Aviation and fired last year, members of A. F. of L. unions? There is something wrong, I think, with the whole program. But these two gentlemen somewhere along the line decided that the way to try to get pure was to attack this union and try to wreck it in the Magnavox plant and as recently as a couple

of weeks ago they came out openly for one of the rival raiding unions, UAW-AFL. In the first election UE led [fol. 570] by a substantial vote and we face a runoff with the UAW-AFL.

The leaders of the UAW-AFL whom you gentlemen are helping are still security risks. I feel sorry for them that they are innocent and have been framed.

Mr. Tavenner. Did you discuss the matter with Ives?

Mr. Gojack. At the time he became a security risk.

Mr. Tavenner. Since the time this question came up?

Mr. Gojack. Last January I did, and went to Chicago with him.

Mr. Tavenner. Did he tell you the nature of the charges?

Mr. Gojack. I saw a copy of them.

Mr. Tavenner. Then you know why?

Mr. Gojack. I don't know what the details were in the hearing. I wasn't at the hearing.

Mr. Tavenner. You know the nature of the charges?

Mr. Gojack. Yes.

Mr. Tavenner. What was the nature?

Mr. Gojack. Some vague guilt-by-association charges.

Mr. Tavenner. With whom?

Mr. Gojack. One was for activity in the CIO strike at the Salem Furniture Co.

Mr. Tavenner. With whom? Answer that question, please.

Mr. Gojack. I don't know.

Mr. Tavenner. Was it you?

Mr. Gojack. I don't know that.

Mr. Tavenner. Wasn't it stated in the charges?

Mr. Gojack. It was not. It most certainly was not.

Mr. Tavenner. Were you so told by Ives?

Mr. Gojack. No. Not only that, Mr. Tavenner, but since you are trying to imply that I was responsible for his security risk, I want to tell you something else. There is another plant in Fort Wayne, a Capehart plant, whose security officer was in this room trying to use this witch-hunting committee for his union-busting purposes.

In his plant the chief steward was also declared a security risk for the same kind of loose charges as Bill Ives. I was with that man when we met with the security people and he has been subsequently cleared, cleared for top-secret work.

Mr. Scherer. In view of your taking the first amendment as to whether you were a Communist or not, I would be in sympathy with those people who were trying to get rid of your influence in union activities. I really would.

Mr. Gojack. You don't understand the position I took here yesterday.

Mr. Scherer. I thoroughly understand.

Mr. Gojack. I read into this record my affidavits that are on file and I read them twice. My objection on the ground of the first amendment was to the entire hearing here. You people have no right, this committee has a right to operate only for the legislative purposes. You are not operating for a legislative purpose now. You are acting as prosecutor, court and jury—and my understanding of the American system—and despite my inadequate education I think I know more about American history and American traditions and the Constitution than some people in the room; it is quite different from the way this committee is operating.

[fol. 571] I don't think you have the right to ask me these questions about how I think and feel, for if you do, the next step will be your hands over my shoulder in the polling booth and I don't think we want to come to that.

When I referred to the first amendment I was referring to that fundamental objection to this hearing.

Mr. Moulder. Your education is not inadequate for the line of work that you are doing. In fact, as I said a while ago, you are plenty sharp and smart.

Mr. Scherer. Too much so.

Mr. Tavenner. Let us get back to the question.

Mr. Gojack. I resent your remark, Mr. Scherer. When he said I was plenty sharp and smart you said "too much so." Is it wrong to try to educate oneself in this country?

Is it wrong for a labor union to try to be as smart as management?

Mr. Moulder. Proceed.

Mr. Tavenner. You say there was considerable discussion and difference of opinion about the acceptance of the copies of the Communist Daily Worker or Sunday Worker. I find this paragraph in the minutes:

A general discussion was held on this matter at which time opposition was expressed to such a donation and also those in favor of accepting expressed that people can get considerable information from this paper that they cannot get from any other labor or daily paper in the way of labor news.

Is anything false about that statement in the report in the minutes?

Mr. Gojack. There was a very lengthy discussion, as I recall, and that paragraph describes part of that discussion, yes.

Mr. Tavenner. And accurately; doesn't it?

Mr. Gojack. Not completely. Accurate insofar as it goes, yes.

Mr. Tavenner. Wasn't the report also accurate in that it stated the letter which was presented was a letter addressed to Brother Gojack from the secretary of the Communist Party?

Mr. Gojack. I am not sure of that because if a letter had been addressed to me in my capacity as UE district council president without some reference to the GE strike, as I recall it, there was something on the envelope and I don't know where it came from, about GE strike committee, something like that. That was my reason for taking my letter along there. As I remember, other people, someone in the local, received a similar letter.

Mr. Tavenner. Who was it?

Mr. Gojack. I don't recall. If I remember correctly, it was addressed to the district local.

Mr. Tavenner. This minute says the document was addressed to Brother Gojack. There isn't a reference to any

other person. Was the vote finally that of 10 in favor and 7 against accepting this type of assistance from the Communist Party?

Mr. Gojack. As I recall, I don't remember the exact vote; as I recall the strike strategy committee—I was not a member of it—after a very long debate voted to accept the contribution on the basis that they would accept a contribution from anybody, and if the Wall Street Journal [fol. 572] would have sent out a bundle of their papers they would have accepted that.

Mr. Tavenner. Did you at the time, at this meeting, January 16, 1946, know the leaders of the Communist Party in the State of Indiana? That is, the chairman and the State secretary?

Mr. Gojack. I don't even know what the positions represent, I don't know.

Mr. Tavenner. You did not know who the chairman was and who the State secretary was?

Mr. Gojack. Mr. Tavenner—

Mr. Scherer. I ask that you direct the witness to answer the question.

Mr. Moulder. The witness is directed to make a direct answer to the question.

Mr. Donner. Will you repeat the question?

Mr. Tavenner. Repeat the question, please.

(The reporter read from his notes as requested.)

Mr. Gojack. I am not at all certain who the chairman and secretary was at a given time. I could answer that by saying, and truthfully, that—

Mr. Scherer. We assume it is truthfully. You are under oath.

Mr. Moulder. Proceed.

Mr. Tavenner. Proceed, please.

Mr. Moulder. What period of time are you referring to as to who the chairman and secretary was?

Mr. Tavenner. January 16, 1946.

Mr. Gojack. As I started to say before I was interrupted by that snide remark from Congressman Scherer, I could

answer that question truthfully by saying that I read the press, and the Indiana press often reported accounts of activities of the Communist Party, officials of it would issue releases or get in the press. I might have known at that time who these officials were. But when I start answering those kinds of questions I feel that we are getting to the heart of the fundamental objective to this committee in its operation here. I don't believe that this committee has a right to ask me who I know, what my political beliefs are.

Mr. Moulder. He did not ask you that question. He just asked you if you knew who was serving in the official capacity, and as you have stated, you may have acquired that knowledge by reading the papers.

Mr. Gojack. I don't think they have a right to ask me if I knew Wendell Willkie, whom I knew in Indiana. I don't think you have a right to ask me questions relating to any political connections I may have, any friends I may have, I think we are getting into the heart of my dispute with the committee here. I don't think you have a right to go into any of this.

Mr. Moulder. He is not asking you about your political affiliation. He is asking you if you knew who was serving—

Mr. Gojack. Here is what he is doing. He is trying to convict me on a guilt-by-association basis, and I don't think this committee has a right to indict me, let alone convict me. I think that is a job for the courts in this land.

I think here this committee is getting too far afield from what Public Law 601 has laid out for it. You are doing the job of the courts here and I think you are usurping the rights of the court.

[fol. 573] (The witness conferred with his counsel.)

Mr. Scherer. There are only two things this committee can do and that is cite you for contempt if you are guilty of contempt, and secondly, if you would commit perjury or any witness commits perjury, refer the testimony to the Department of Justice. That is all this committee can do. It cannot do anything else. It cannot convict anybody.

Mr. Donner. Is the reporter recording the fact that I consulted with my client?

Mr. Moulder. Yes.

Mr. Donner. May I object to that, please?

Mr. Moulder. The record will show your objection. As I understand the question, it has nothing to do with your association, political association, or any objection you have raised. The question is merely do you know who was serving in that period of time in a certain official capacity. Is that right?

Mr. Tavenner. Yes, sir.

Mr. Gojack. Since Mr. Tavenner has mentioned this name of—what was it—Johnson? I recall knowing from newspapers or discussions that name of Johnson as some Communist official in Indiana. I don't know his position and I don't know when he was an official, and don't know the time.

Mr. Scherer. Is that the only way you know Johnson, because you read it in the newspaper? Is that the only way you know Johnson? Is that what you are telling us?

Mr. Gojack. No, that is not the only way.

Mr. Scherer. Tell us how well you knew Johnson.

Mr. Gojack. I didn't know Johnson well.

Mr. Scherer. Or how slightly you knew him. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson.

(The witness conferred with his counsel.)

Mr. Donner. I want to renew my objection if the record continues to show consultation.

Mr. Moulder. Well, also have the record show that the witness has a perfect right to confer and consult with you at any time.

Mr. Donner. I understand.

(The witness conferred with his counsel.)

Mr. Gojack. I want to decline to answer that question on the following grounds. It is here where in this area of questioning that I grow fearful of the use of a paid liar like Matusow, a paid liar like Strunk, and a paid lunatic and convicted forger like Cecil Scott and any other paid informers that you may have, and because I feel as strongly—

Mr. Scherer. Sounds like the article your counsel wrote for the Nation magazine. I remember reading those things in that magazine.

Mr. Gojack. If you will be patient I will give you my next comment.

Mr. Scherer. I am very patient.

Mr. Gojack. I agree with the Baltimore Sun and Time magazine which said that the Matusow case reminds us that stoolpigeons are as a class to be despised and not to be trusted—

Mr. Moulder. Those are the reasons that you—

[fol. 574] Mr. Gojack. I haven't finished my reasons.

Mr. Moulder. You wish to list some more reasons for refusing to answer the question?

Mr. Gojack. Yes.

Mr. Moulder. How long do you think it will take?

Mr. Gojack. About a half minute.

Mr. Moulder. All right.

Mr. Gojack. Because I fear the use of such paid informers who as a class are to be despised, I fear to answer that question and therefore I invoke the protection afforded by the first amendment to the United States Constitution and I reiterate my basic objection that the first amendment to the Constitution does not give this committee the right to inquire into any of my beliefs, any of my connections, any ideas I may have.

Mr. Scherer. Mr. Chairman, I ask that you direct the witness to answer my question. The first amendment is no basis for refusal to answer that question.

Mr. Moulder. Is it your question?

Mr. Scherer. My question is—

Mr. Moulder. The Chair directs the witness to answer the question propounded by Mr. Scherer. As I understand it, you refuse to answer for the reasons stated.

Mr. Gojack. Yes.

Mr. Moulder. Proceed.

Mr. Scherer. Wait a minute. I want to pursue that further.

Is it not a fact, Witness, that you knew this man Johnson and had personal contact with him?

Mr. Gojack. To save everybody a lot of time here, to this question and to many, many, many questions that Mr. Tavenner can ask me from his fat files, a lot of which has been furnished the committee by the McCarthyite IUE-CIO union, some of it stolen material when thugs from this union broke into a local union hall in St. Joseph, Mich., and stole material from the files; your committee now has that material, because of the distortions you can place upon that material, you can ask me and you undoubtedly may ask me many, many many questions.

On most, if not all of these questions, I am going to object on the ground that under the first amendment of the Constitution this committee has no right, absolutely no right, to question my beliefs, my political affiliations, what ideas I have, my thoughts.

Mr. Scherer. Are you refusing to answer on the basis of the first amendment?

Let me ask you this question. Isn't it a fact that you didn't tell the committee the truth a few minutes ago when you said you only knew Johnson as the chairman of the Communist Party in Indiana as the result of what you read in the newspapers?

Mr. Gojack. I had not finished my earlier answer and I am going to continue to finish if I may.

Mr. Scherer. You are going to answer this question.

Mr. Moulder. The Chair directs you to answer the question propounded by Mr. Scherer.

Mr. Gojack. The answer to that question is the same as my previous unfinished answer.

Mr. Scherer. Do you mean you are going to take the first amendment in refusing to say whether you told the committee the truth a few minutes ago? Is that a correct understanding of your answer?

[fol. 575] Mr. Gojack. To any question this committee propounds that I feel might be a trap for a frameup with the use of paid informers like Matusow, paid liar Strunk, and the lunatic Cecil Scott and any other paid liars you may have, to any of those questions that I fear might result in my frameup—I will reiterate my basic objection on the ground of the first amendment that this committee has no right to go beyond the legislative investigation field, that if I have done anything of a criminal nature that is a job for the courts to handle. This committee has no right to usurp the power of the courts, that this committee is using this hearing and using these questions in an effort to break a union, as your chairman openly stated, and that this committee has no right to break a union and if the committee had such a right to break a union, that is not authorized by the Public Law 601, if the committee had that right under Public Law 601 the first amendment to the Constitution would forbid it.

Mr. Scherer. I understand, Witness, that you are refusing to answer the question as to whether you told the truth a few minutes ago when you said the only way you knew Johnson was through what you read in the newspapers.

Do I understand you are refusing to answer that question now for the reasons that you have just given?

Mr. Gojack. You had better check the record. You are getting too anxious.

Mr. Scherer. All right. I will put it more bluntly then. Isn't it a fact that just a few minutes ago you lied when you said that the only way you knew Johnson was through newspaper accounts?

Mr. Gojack. You distorted my testimony here, you are distorting it now.

Mr. Scherer. The record will show if I distorted your testimony.

Mr. Gojack. You had better check the record and read it back.

Mr. Scherer. Will you answer the question?

Mr. Gojack. I did nothing of the sort a few minutes ago and if you will let me finish my—

Mr. Scherer. I ask that you direct the witness to answer my question.

Mr. Moulder. I do not recall the question.

Mr. Scherer. My question was, was it not a fact that he lied a few minutes ago when he told us the only way he knew of Johnson as chairman of the Communist Party in Indiana—

(The witness conferred with his counsel.)

Mr. Scherer. Was through what he had read in the newspaper.

Mr. Moulder. I recall his answer, and I believe he said he did not lie.

Mr. Gojack. I said that—I said nothing of the sort. He is posing a fabricated question.

Mr. Moulder. He has answered that question by denying it.

Mr. Gojack. Not only that, but his question distorts my previous testimony. I said nothing of the sort.

Mr. Scherer. How do you know Johnson, then?

(The witness conferred with his counsel.)

Mr. Gojack. I just decline to answer that and I had not finished my answer.

Mr. Scherer. I thought you had declined.

Mr. Gojack. My further answer is that if Public Law 601 does give this committee the right to break unions, then [fol. 576] that resolution is unconstitutional and it is unconstitutional further because no one can determine from the boundaries of this committee.

Mr. Scherer. Witnesses have made these arguments a thousand times in the last 2 years. Is it not a fact that you knew Johnson through personal association with him?

(The witness conferred with his counsel.)

Mr. Gojack. I have already declined to answer that for the reasons previously stated.

Mr. Scherer. All right. That is all.

Mr. Tavenner. Do you know who was the State secretary of the Communist Party in 1946?

Mr. Gojack. I frankly don't know, but to that question I am going to repeat my basic objection. I don't think you have a right to ask me that question.

Mr. Scherer. Mr. Chairman, I ask that you direct the witness to answer the question. Let's keep the record straight. He has no right to object to any question counsel asks.

Mr. Moulder. Do I understand you decline to answer that question for the reasons previously stated? That is the way I interpret it. However, maybe you didn't say that clearly.

Mr. Scherer. He said "I object to it. You have no right to ask me the question." He didn't decline to answer on the basis of the first amendment.

Mr. Moulder. The witness is directed to answer that question.

Mr. Gojack. Mr. Scherer is again distorting my testimony. What I said was I frankly don't know, but I am going to object to that question on the fundamental grounds that I have stated here, and that I repeat.

Mr. Moulder. You have no right to object to the question. As I understand, you decline to answer by saying frankly you don't know who the secretary was. Is that so?

Mr. Gojack. I think the record is clear.

Mr. Moulder. We understand you object to all the questions being propounded here to you during this procedure, but I understand your answer is you do not know who the secretary was.

Mr. Gojack. I didn't say that.

Mr. Scherer. I ask that you direct him to answer the question.

Mr. Gojack. I think the record will speak for itself on this point.

Mr. Scherer. Who was the secretary of the Communist Party in Indiana at the time asked by Mr. Tavenner.

Mr. Gojack. So that we may have a consistent record here, I will repeat it. I frankly don't know, but I object to the question and I decline to answer the question.

Mr. Scherer. Don't you know who the secretary was.

Mr. Tavenner. Are you acquainted with Henry Aron, A-r-o-n?

Mr. Gojack. To this and to every other question you ask me along these lines for the reasons I have stated earlier, I don't know what paid liar you have here to do a Matusow job on me.

Mr. Moulder: We do not have any paid liars, neither has the committee ever employed any witness to testify or compensated any witness for his testimony any more than you are going to be other than for your mileage and attendance before the committee.

Mr. Gojack. You had a Matusow who has said quite differently, from what I have read.

Mr. Scherer. We have heard about Matusow from you [fol. 577] all day yesterday and all day today. He came from the Communist—

Mr. Gojack. I don't know Strunk but I know he is a liar.

Mr. Scherer. He came from the same Communist Party that you refuse to say under the first amendment whether you were a member of or not.

Mr. Gojack. When you cite testimony here as the counsel for the committee did yesterday from a so-called underground agent, Strunk, that is so fantastically a lie as that this woman who was 200 miles away ran a strike at Bay City when Bay City is a long way from Detroit, and that the strike was at a guided missile plant where Square D

never made guided missiles, and when Congressman Clardy used that paid liar's testimony to try to break that strike.

Mr. Scherer. We are getting away from the question. The question was did he know this man Aron. He is dancing around. Do you know Aron? That is the only question.

Mr. Gojack. I have already declined. Aren't you with us?

Mr. Moulder. On the ground of the first amendment?

Mr. Gojack. Yes, sir; for the reasons stated, and all of the fundamental objections that I have on the ground the first amendment doesn't give you the right to even hold this hearing, let alone ask me these questions.

Mr. Moulder. Proceed.

Mr. Tavenner. Mr. Chairman, in order that the record may be straight on it, this witness has referred several times to the testimony of Strunk as having been read by me and as having indicated that Miss Jacobs was engaged in strike work at the Square D plant in Bay City, Mich. I did not read that from her testimony at all. That was a statement made by Mr. Clardy, one of the committee members at that time, as to information that he had. It was not testimony by Mr. Strunk.

Mr. Gojack. Then Congressman Clardy was a liar and I so told him in the telegram when he used that lie to try to break the Square D strike just as this committee is using this hearing to try to wreck a union at St. Joseph, Mich. and Fort Wayne, Ind.

Mr. Moulder. I can't understand, Mr. Gojack, why in response to questions where you are afforded the opportunity of giving an explanation or of denying or affirming certain accusations or charges made, instead of giving the explanation or denying it in an intelligent way you make an embittered, violent statement of "Liar" or use some other violent language, which serves no one.

You hold an important, responsible position as a leader of a labor organization representing many, many members and their families and your action and your conduct is a direct reflection upon each of those individuals who are

members, as well as the organization you represent. I think you make an unfavorable impression by pursuing that course instead of giving an intelligent explanation.

Mr. Scherer. You are attempting to hide behind the first amendment.

Mr. Gojack. Precisely, because I feel so strongly for these people do I take such a stand. I have no fear for myself here. I have no fear for the risk I take from the use of paid informers, as far as I am personally concerned. I do fear for the people who are involved and I will tell you why. Congressman Walter said on the floor of Congress in a speech in which he interfered in the Magnavox election in which he told the people how to vote that if they [fol. 578] would get rid of my union and get another union, a CIO union, they would get stronger seniority and higher wages and this is not true, because in another Magnavox plant in Paducah, Ky., where the workers did get rid of A. F. of L. union where the IUE-CIO McCarthyite union raided them, they went on strike 7 to 10 weeks and suffered a 9-cent wage cut and people lost their jobs.

A woman was fired by that company who spoke in a meeting in Fort Wayne a couple of weeks ago, and if our union should be lost to the workers at Magnavox because of this hearing, because of this committee's attack on our union, then workers will suffer.

There are older women in this Magnavox plant only working today because they have a strong UE Local 910 contract. Their wages and seniority and their very jobs are at stake, and I have seen people in this GE plant who have lost their jobs. I feel deeply for these people, their security is at stake. I am here fighting for them, not for myself. I am here fighting for them.

Mr. Scherer. We are not interested in your attacks on other unions or washing different unions' dirty linen. We are interested in whatever you know and whatever connection you might have had with the Communist conspiracy. That is the reason you are here, and you won't tell us about that. You hide behind the first amendment.

Mr. Gojack. I am washing your dirty linen with Matusow, Strunk, and other paid informers. That is the only dirty linen I know of.

Mr. Moulder. Proceed with the questioning.

Mr. Tavenner. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?

Mr. Gojack. To that question and to every other question like it, I repeat my basic objection that this committee has no right to ask me this question, the first amendment to the Constitution prohibits your inquiring into my political beliefs, what meetings I went to. My goodness, if you are allowed—

Mr. Scherer. Mr. Chairman, we have heard this speech a dozen times.

Mr. Moulder. Mr. Gojack, you have no right to object to a question being propounded to you during the proceedings of this hearing. You can decline to answer for legal reasons if you wish to do so. Why don't you give a direct answer, a direct response, rather, by answering the question or declining to answer instead of objecting to the committee even existing or the act of Congress creating it, and answer the questions propounded by counsel?

We understand your opposition to the committee, your bitterness against the committee functions. You have clearly expressed yourself along that line, but I don't think you should proceed to make that statement every time you are asked a question.

Mr. Gojack. Mr. Moulder, this goes to the heart of my objections because—

Mr. Moulder. Then decline to answer for the reasons previously stated on the first amendment to the Constitution, as provided by the first amendment to the Constitution if that is your reason.

Mr. Gojack. I will do that, but I would like to finish my reply to this one. If this committee can ask me those questions, then you can ask me questions about meetings at which I attended with other trade unionists, A. F. of L.

and CIO, Republican Labor Club, then some Democratic committee or itself can declare somebody being involved in 20 years of treason.

[fol. 579] Mr. Scherer. We are only asking you about Communist meetings. That is all we are interested in.

Mr. Gojack. To some people like your friend McCarthy, being active in another political party involves treason, and my point is that this goes to my basic objection. You have no right to ask me the question.

Mr. Scherer. Direct the witness to answer Mr. Tavenner's question.

Mr. Moulder. The witness is directed to answer the question.

Mr. Gojack. I decline to answer on the ground previously stated.

Mr. Tavenner. Mr. Gojack, referring again to the meeting held of the strike committee on January 16, 1946, I find this minute:

Brother Brown during the discussion asked Brother Gojack whether he was a member of the Communist Party or not.

Do you recall that question having been asked you?

Mr. Gojack. I recall a lot of questions being fired at that meeting. It was a lengthy discussion.

Mr. Tavenner. Do you recall that question?

Mr. Gojack. Yes; I believe that question was asked me.

Mr. Tavenner. Did you answer it?

Mr. Gojack. I only recall the question being asked me, now that you have read it. I don't remember the details of answers I gave to questions in 1946. I have been asked many questions in the course of my work.

Mr. Tavenner. Did you deny it or affirm it, or did you answer it at all?

Mr. Gojack. Very honestly I don't recall what position I took. In union meetings when the question has been propounded, I have answered that question truthfully to the satisfaction of every membership meeting where it was posed to me. I just don't recall how I phrased the answer, what the answer was, or whether I even answered it. If

you will read from the minutes it might refresh my recollection. 1946 is a long time ago.

Mr. Tavenner. I will ask you if this refreshes your recollection.

Direct answer was not given and the Chair ruled such a question out of order.

Does that refresh your recollection?

Mr. Gojack. I just don't recall. As I testified earlier, there was lengthy discussion and debate and as I testified earlier there were many questions answered. I don't recall what my response was. I wouldn't deny that that is the way the question was handled. I don't have a clear memory of what happened in 1946 at that particular meeting.

Mr. Moulder. Do you have a transcript of the proceedings?

Mr. Tavenner. Yes, sir.

Mr. Moulder. I suggest that you read the questions and answers and he can deny or affirm them.

Mr. Gojack. This was a local union meeting.

Mr. Tavenner. These are minutes, not a transcript.

Mr. Moulder. I am sorry.

Mr. Tavenner. Do you recall having attended a meeting of the international union on August 21, 1947 at 215 Sheldon Southeast, Grand Rapids, Mich.?

Mr. Gojack. Yes.

Mr. Tavenner. I think you understand what my question is going to be.

[fol. 580] Mr. Gojack. I certainly do, and you are going to get a surprise.

Mr. Tavenner. What was your answer to the question that was asked you at that meeting as to whether or not you were a member of the Communist Party?

Mr. Gojack. The answer to that question was no, and here again you are using some of the worst type IUE-CIO propaganda.

Mr. Scherer. You said the answer to that question was no. Were you telling the truth?

Mr. Gojack. I am going to explain my answer and then get to you. Be patient, will you? I am allowed to explain my answer.

Since you have asked about that meeting I am going to tell you a little bit about it.

Mr. Scherer. I suggest, Mr. Chairman, that he answer this question and then he can tell about the meeting. My question was, when he answered "No" was he telling the truth at that time?

Mr. Moulder. That speaks for itself.

Mr. Gojack. Mr. Scherer, to your question I am going to invoke the first amendment. I want to answer Mr. Tavenner's question.

Mr. Scherer. Are you invoking the first amendment as to whether or not you told the truth when you answered no in 1946 to the question as to whether you were a Communist?

Mr. Gojack. Because I don't want to cooperate with you in any way in your union busting, and with your use of paid informers, and for that reason especially I am going to invoke the first amendment to your particular question. I am going to explain my answer.

Mr. Scherer. Just a minute. I understand you won't even tell us now whether you were telling the truth when you told the union that you were not a member of the Communist Party, will you? You were not under oath at that time. So I can only infer that you lied when you told the union that you were not a member of the Communist Party.

Mr. Gojack. If you will be patient I will explain to you why a witness before this committee has to use—and I have sympathy for those innocent people—the fifth amendment which I am not using here today and did not use yesterday.

Mr. Scherer. You use the first.

Mr. Gojack. I am going to explain why that is necessary.

Mr. Moulder. What innocent people are you referring to?

Mr. Gojack. The many people who come before McCarthy and you people and have to invoke this protection of the Constitution to avoid a frameup by paid informers like Matusow, Strunk, and others.

Mr. Moulder. I would like to know who in particular, what person you refer to. For example, would you refer to Alger Hiss as being one of those innocent people before this committee?

Mr. Gojack. I don't know the gentleman. Some General Electric officials know him better than I do. I don't know him.

Mr. Moulder. In other words, all people and all persons who have ever appeared before this committee you defend as being innocent people. Do I understand you to include every one as being innocent?

Mr. Gojack. I am about to explain why this particular question makes it clear people have to resort to the protection of the Constitution.

Mr. Moulder. What particular instance do you have in mind when you refer to innocent people?

[fol. 581] Mr. Gojack. If you let me make my explanation I may think of some. In this meeting there were about 700 people. It was a membership meeting of the Lear, Inc., local union. One Carlton Sanford, who was out to bust that union and who succeeded and who was later paid off with a job in the personnel department was using the McCarthy approach to wreck that union. He had a tape recorder at this meeting.

Mr. Scherer. Do you mean union members and union officials use McCarthy methods?

Mr. Gojack. This was a paid agent of the Lear Co., later rewarded with a job in the office.

Mr. Scherer. In 1947?

Mr. Gojack. Yes, a paid agent for the company. The companies are mostly responsible for you people being in the business.

Mr. Scherer. Was Joe in the Senate at that time?

Mr. Gojack. General Motors brought Dies to my hometown in 1940 to keep us from organizing the union. There

were 700 people at this meeting and I was asked the \$64 question. I answered it "No." Then someone else asked a question. Yes, but you act like a Communist, or something like that, the usual McCarthy approach. You sound like one.

Mr. Moulder. I am sorry to interrupt. At the time you answered that question "No," were you then a member of the Communist Party?

Mr. Gojack. To that question and to all questions relating to my political beliefs and affiliations I am going to state the objection that I have elaborated earlier and stand on that. If you will let me finish the explanation why people have to use these amendments I will explain why. This is a good example of why it is necessary for a person like myself to do this.

Mr. Tavenner. Mr. Chairman, the witness apparently is determined to make a speech here which is not responsive at all because he didn't answer the question.

Mr. Moulder. That is correct.

Mr. Gojack. It explains my answer.

Mr. Moulder. Mr. Tavenner, do you have any other questions?

Mr. Gojack. Then when I was asked another question I said "Well, if fighting for higher wages, better conditions, and so forth, if that makes me a Communist, then I am a Communist and so are thousands of other people."

Mr. Moulder. Of course that doesn't make you a Communist and no one has made that assertion.

Mr. Gojack. Will you let me finish my explanation, Mr. Chairman?

Mr. Moulder. That isn't an explanation.

Mr. Gojack. I am explaining why people have to use the Constitution.

Mr. Moulder. You are praising yourself about the good work you claim to have done for the union.

Mr. Gojack. I am explaining why it is necessary for innocent people to use the protection of the Constitution. Sanford had the tape recording, he edited just like Matu-

sow, edited the tapes of the Dayton hearings. The tape was edited then read to 23 people in another room who heard me say "Yes, I am a Communist and proud of it," but they didn't play the other part of the tape which said [fol. 582] "So are thousands of other Americans," or the preceding part of the tape which said "If fighting for higher wages and better conditions, and so forth, makes me a Communist, then I am a Communist."

That tape was edited. I made the statement that if fighting for higher wages, better conditions, security for the people, that is communism, then I must be a Communist and so are thousands of other Americans.

Mr. Moulder. Did you also make a statement that you were a Communist and proud of it?

Mr. Gojack. I don't recall my exact words but the tape was edited and played to the people and they signed an affidavit. Since 1949 the IUE-CIO has been peddling that dishonest and forged piece of alleged proof, and if that is the kind of material your committee uses then I am quite clear in my mind why many, many innocent people have to invoke the proper text of the United States Constitution before this committee.

Mr. Scherer. I just think the CIO was trying to get rid of Communist-dominated unions and Communist leadership. I think the CIO is to be complimented.

Mr. Gojack. This was in the year 1947 when Lear, Inc., was trying to wreck a union and they succeeded.

Mr. Moulder. We could go on with this forever. Mr. Tavenner, do you have further questions?

Mr. Tavenner. He refused to answer the question that I asked him. My question was whether it was true that he was not a member of the Communist Party. Do you want to have a recess or go straight ahead?

Mr. Moulder. The committee will stand in recess until 1:30 this afternoon.

(Whereupon, at 11:30 a.m. the committee was recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

Committee members present: Representatives Morgan M. Moulder (chairman) and Gordon H. Scherer.

Mr. Moulder. The committee will be in order.

Mr. Tavenner. Mr. Gojack, I understand that you have been one of the vice presidents of the UE since about 1943; is that correct?

Mr. Gojack. Yes, sir.

Mr. Tavenner. Will you state whether or not your parent organization, the UE, is affiliated with the International Confederation of Free Trade Unions.

Mr. Gojack. I have no recollection of that, I don't believe so, sir. It is not affiliated with any international union body other than the fact that ours is by constitution an international union that encompasses local unions in Canada and the United States. It is the only international body that our union is affiliated with.

Mr. Tavenner. Aren't you familiar with the World Federation of Trade Unions?

[fol. 583] Mr. Gojack. I have read about both these two federations of unions, internationally related.

Mr. Tavenner. Is the UE affiliated in any manner with the World Federation of Trade Unions?

Mr. Gojack. No, sir.

Mr. Tavenner. Does your union receive the bulletin which is issued by the World Federation of Trade Unions, a bulletin which bears the name of World Trade Union News?

(Representative Clyde Doyle entered the hearing room.)

Mr. Moulder. The record will show the presence of Mr. Doyle, of California, member of the subcommittee.

Mr. Doyle. May the record also show that my absence from this hearing was occasioned by reason of my being personally present before the Rules Committee of the House of Representatives on another matter. Thank you.

Mr. Gojack. Mr. Tavenner, I am not familiar with that precise publication and I don't know what our international union subscribes to. I know in our district office we get considerable unsolicited mail from many union organizations and from organizations unrelated to trade unions, but who seem to put trade unions on their mailing lists.

Mr. Tavenner. Are you acquainted, Mr. Gojack, with a person by the name of Irving Charles Belson, B-e-l-s-o-n?

Mr. Gojack. I don't recall such a person.

Mr. Tavenner. An investigation which the committee has conducted disposes that in or about April of 1951, 18 American trade unionists traveled in Europe under passports issued in most instances for travel to France for business and pleasure. These individuals after arriving in France immediately started for the Soviet Union where they participated in May Day celebrations held in that country and many of them returned to the United States and engaged in rather extensive propaganda activities.

After the return of these people to the United States the State Department picked up their passports.

Now, that was in April 1951. In late June or July of the same year 10 more trade unionists departed from the United States under American passports claiming they were going abroad to various countries of Western Europe as tourists when actually they went to the Soviet Union.

Investigations further disclose that funds for passage were handled by an organization known as the American Committee to Survey Trade Union Conditions in Europe, which was managed and operated by the person I mentioned, Mr. Belson.

Have you had any association of any kind with the committee known as the American Committee to Survey Trade Union Conditions in Europe, or any representative of it?

Mr. Gojack. Not to my knowledge and recollection, sir.

Mr. Tavenner. Mr. Chairman, our investigation regarding these trips behind the Iron Curtain further discloses that a number of those persons who obtained their pass-

ports from the State Department to travel in Europe did not advise the State Department in their applications of any intention of traveling behind the Iron Curtain or in the Soviet Union.

[fol. 584] On the contrary, their applications showed, I believe without exception, that they proposed to travel in various countries in Europe for business, or for study, or for pleasure purposes.

When investigations were made of what was alleged to be fraudulent procurement of passports, many of these individuals, Mr. Chairman, explained that at the time they prepared their applications for passport they had no intention of going into the Soviet Union, but that after they arrived in Paris they met representatives of the Metal Workers Trade Union¹ in Paris and that it was that organization which invited them to travel to the Soviet Union at their expense.

Due to this device, none of those persons have been prosecuted for procuring fraudulent passports or passports fraudulently.

Now, I want to ask this witness whether he filed an application for a passport in 1951.

Mr. Gojack. Yes, sir.

Mr. Tavenner. Prior to filing your application for passport did you have any knowledge of the Metal Workers Trade Union in Paris?

Mr. Gojack. I don't know anybody in Paris, sir.

Mr. Tavenner. I am not asking you whether you knew anyone individually, but had you any knowledge of that organization in Paris prior to your filing your application?

Mr. Gojack. No, I have no knowledge, I have a fragmentary knowledge of the French trade union movement, reading about the struggles and primarily reading the Labor Press, New York Times, Wall Street Journal, organs of that sort.

¹ This is a reference to Seine Metal Workers Union.

I may have somewhere read some such organization conducted a strike.

Mr. Tavenner. Had you had any connection with that organization either directly or indirectly?

Mr. Gojack. Well, if you call, if you include as an indirect connection the possibility that some of our locals might have received a publication—as I testified earlier, we get reams of unsolicited publications, most of which go in the wastebasket. Somewhere along the line some organization might have sent a circular or something like that. I don't know.

Mr. Tavenner. I hand you a photostatic copy of an application for passport bearing date of December 12, 1951, and ask you whether or not that is a photostatic copy of an application filed by you.

Mr. Gojack. Yes, sir.

Mr. Tavenner. What was the purpose of your desire to travel to Europe?

Mr. Gojack. To take a vacation that was long overdue.

Mr. Tavenner. In what countries?

Mr. Gojack. France, Italy, and, as I indicated on the passport, time permitting, Switzerland.

Mr. Tavenner. Did you have any intention of traveling behind the Iron Curtain?

Mr. Gojack. No, I had no intention, I had no plans to. I am sure I must have some distant relative there, for as my application points out my parents were born in Hungary, a part of Hungary that is now a part of Roumania, and I had hoped that some day conditions would be such in this world that I could visit these cousins and relatives of mine.

[fol. 585] Mr. Tavenner. Did you plan to do that on this trip?

Mr. Gojack. No, because it was about this time that you had this case involving this fellow from ITT¹ and travel

¹ Reference to Robert Vogeler, International Telephone & Telegraph Co. official imprisoned by the Hungarian Government in 1949.

was cut off to Hungary and I was aware of that. There was no chance of any American citizen traveling to Hungary at that time. I distinctly remember the case.

Mr. Tavenner. Were you approached by any group in this country to interest you in taking that trip to Europe?

Mr. Gojack. No, I was approached by no group. I was aware that many trade unionists were going, had gone to Europe, officers of our own union had gone. As a matter of fact, the State Department had arranged trips for a number of people to go to Europe. I was desirous of getting there too, if I could.

Mr. Tavenner. Do you know if any of these people applied to the State Department to go to the Soviet Union?

Mr. Gojack. I don't know what these people did in their applications.

Mr. Tavenner. Did they go to the Soviet Union and participate in May Day celebrations of 1951, any of them?

Mr. Gojack. I don't know anything about that.

Mr. Tavenner. Will you tell the committee, please, what the source of the proposed funds were for the taking of this trip by you?

Mr. Gojack. I had planned to take a loan on my automobile to finance that trip. Having reached the point where I finally got my car paid for.

Mr. Tavenner. Did you discuss the taking of this proposed trip with representatives from any travel organization?

Mr. Gojack. I checked for information to some travel agencies; I got folders. I remember calling some of the airlines when I was in New York on a trip for our union attending the general executive board meeting. I remember checking the Air Force and learning that such lines as Air France you can do much better than some of the other lines. But I did very little except make a cursory check to see what was involved in costs.

Mr. Tavenner. Did you discuss your proposed itinerary with any individual, outside of your own family?

Mr. Gojack. Yes, I remember discussing the proposed

trip with the members of our union. I remember discussing it with the members of my district executive board to make arrangements for time off or leave of absence if that was necessary if my vacation time would not cover the time needed for travel. I had 2 weeks vacation coming and I posed the question whether or not I could have 2 weeks, I was thinking in terms of 2 or 3 weeks. May I ask, is it a crime to travel these days?

Mr. Tavenner. Not at all. We want to find out the purpose of your trip.

Mr. Scherer. What was the year of that trip, counsel?

Mr. Tavenner. December 1951 was the date of the filing of the application and the application contains the statement that the approximate date of departure is as soon as possible after the holidays.

Mr. Scherer. Does it indicate in what countries he wanted to travel?

[fol. 586] Mr. Tavenner. He proposed to travel in France and Italy and, time permitting, Switzerland. What was the purpose of the trip?

Mr. Gojack. Vacation.

Mr. Tavenner. It so states on the application. It is noticed that the signature of the identifying witness is Julia Jacobs. Her address has been mentioned several times. Actually that was not where she lived. You have stated she was a guest there, merely, at that time. Her residence was at another place in Indiana, wasn't it?

Mr. Gojack. No. Her residence was not in another place at that time and since the question was raised here yesterday, I have had a chance to clearly establish what was involved in this address business. It so happened, I welcome the opportunity to clear the record so that we need have no further handling of this matter that will give the newspapers and radio the opportunity to slur my family.

I was involved in some work in Michigan and Miss Jacobs was about to take an assignment in Greenville, Tenn. The matter was not yet worked out, she had not, final arrange-

ments for her work there were not clear. She came by and at the request of my wife and I, agreed to remain at our place until something could be worked out.

In the meantime her assignment was worked out and during this period while I was working in Michigan I had to, I wanted to make application for this passport in Fort Wayne and I needed a witness who knew me over a period of time that could sign the necessary form. She being at our home at the time, she was good enough to go along and witness my application for passport.

Mr. Tavenner. Was the passport granted?

Mr. Gojack. No, the passport was not granted. Mrs. Shipley turned me down.

Mr. Scherer. Do you know why you were turned down?

Mr. Gojack. Mrs. Shipley said in her answer, the usual form letter, that a lot of people have received besides me—I understand a judge here has had the same trouble. The form letter said after careful consideration of my request "The Department is of the opinion that your proposed travel would not be in the best interests of the United States."

I tried to find out why but it was never explained to me why my travel would have not been in the best interests of the United States.

Mr. Tavenner. I hand you a letter under date of February 4, 1952, and ask you whether or not you wrote that letter to Mrs. Shipley, inquiring as to the reasons why you were not granted a passport.

Mr. Gojack. I wrote this letter as the letter itself clearly indicates because when I reported to my executive board that I was denied a passport, by unanimous vote my executive board directed me to lodge a vicious protest with her department on the matter of this passport.

As I indicated in the letter before relaying to her the sentiments expressed by those who voted this protest, I asked her to advise me on what grounds she arrived at the opinion that my proposed travel would not be in the best interests of the United States.

Mr. Scherer. If this was a pleasure trip, why was your union interested in the rejection of your application for passport?

Mr. Gojack. Because I reported it to them since everything I do I discuss with my union. You see I treat my union differently than I treat, for example, this committee here. I don't mind answering to my union membership to [fol. 587] my political beliefs and affiliations as I have done repeatedly.

Mr. Scherer. You mean to tell us that is the only reason you reported to the union, because of their interest in you and your interest in the union, when this was nothing but a pleasure trip?

Mr. Gojack. I even make arrangements with my union when I leave my duties for pleasure so that arrangements can be made to cover my work in my office. We operate on that basis. I am answerable to my union for what I do.

Mr. Scherer. The union interceded on your behalf so you could take this pleasure trip?

Mr. Gojack. The union asked me to lodge a protest and try to determine why my passport was denied and I did just that.

Mr. Tavenner. Did you receive an answer from Mrs. Shipley?

Mr. Gojack. As I recall, I was informed that I might look into the matter further.

Mr. Tavenner. Will you examine that copy and state whether or not you received the original in answer to your letter of February 4, 1952?

Mr. Gojack. Yes; I recall receiving this.

Mr. Tavenner. Will you read that, please.

Mr. Gojack (reading):

In reply to our letter of February 4, you are informed that the decision of the Department declining to grant you a passport was due to its inability to obtain a security clearance in your name.

Mr. Tavenner. Did you report that to your union?

Mr. Gojack. Not only that, I reported the further conference I had with someone in the Passport Division.

Mr. Tavenner. Did you report to your union that they had been unable to get a security clearance for you?

(The witness conferred with his counsel.)

Mr. Gojack. As a matter of fact, I don't recall receiving this letter. I, as I recall it, I was given an appointment with somebody in the Passport Division, and I fulfilled that appointment. I contacted them and had a conference with somebody in the Security Division or security officer in the Passport Division.

Mr. Tavenner. Copy of that letter is dated February 19, is it not?

Mr. Gojack. Yes, sir.

Mr. Doyle. What year?

Mr. Tavenner. 1952.

Mr. Gojack. I am not denying it. I don't recall it.

Mr. Tavenner. Is this a copy of your letter of February 25, 1952, to Mrs. Shipley in which you acknowledge receipt of that very letter of February 19?

Mr. Gojack. Yes, now that I see my letter I recall receipt of the letter, I acknowledge it, and I asked her whether the refusal, whether the decision of her Department refusing my passport was due to inability to obtain a security clearance, that it cannot, if this is still a free country, be accepted at face value and I asked her to please explain from whom her Department requires a security clearance to act on passport applications and I asked her to explain why a security clearance was denied in my case. I also asked her to explain what right of appeal I have from such a dictatorial, unexplained decision and then I asked her to explain how and when our old tradition of innocence [fol. 588] until proven guilty has been changed by whom-ever is responsible for my application in this case. In short, I am puzzled and shocked to find myself involved in a situation reminiscent of Hitler Germany and I would ap-

preciate a complete and fair explanation from her on the questions posed above.

Mr. Tavenner. Going back to my former question that you have not answered, did you advise your local union of the receipt of the letter of February 19 that you had been denied a passport because they were unable to get a security clearance for you?

Mr. Gojack. As I testified earlier, I reported to my union not only on all the correspondence held on this, but with a conference I held with some one in the Passport Division.

Mr. Tavenner. You have not heretofore testified that you reported on this letter. You said you reported on the first letter which you received. Now, I am asking you whether you reported about the letter of February 19 which says that you were denied a passport because of the inability to secure a security clearance for you. Did you advise your union of that?

Mr. Gojack. At the next meeting of my district board, if I remember correctly, which was held in March the following year, we met quarterly, I reported and I am certain that I discussed it with individual members of the board, as I came across them in the course of my work, that I had this further correspondence with someone in the State Department and by that, somewhere along the line I had given up the idea altogether since I had passed the period that I would have been able to have taken my vacation.

Mr. Tavenner. Did you advise those members of your executive board that you had been denied a passport because you couldn't get a security clearance?

Mr. Gojack. Well, I still don't know at this point and I didn't know then that the question of security clearance was involved in travel.

Mr. Tavenner. You knew it by that letter of February 19 which specifically said that you couldn't be granted a passport because they couldn't get security clearance for you.

Did you advise the members of your executive board that you couldn't get a security clearance?

Mr. Gojack. I reported that I was turned down because the State Department obviously didn't want me to travel. I gave other reasons why I felt they came to this conclusion.

Mr. Tavenner. Did you tell them why they wouldn't give you the security clearance?

Mr. Gojack. I told them why I thought they turned me down.

Mr. Tavenner. What were the reasons you stated?

Mr. Gojack. I thought it was because I had been on record in the State of Indiana and Michigan in speeches before union bodies as a critic of the Marshall plan. I felt as some later trade unionist came to learn, that this plan made the rich richer and the poor poorer, as one CIO person expressed it.

We discussed it at conventions and we were critical of it. I felt that that might have had something to do with it.

Mr. Scherer. Mr. Witness, now you have told us the reasons why you thought the State Department turned down your application. Did you ever tell the members of the union the reason the State Department gave you for turning down your application?

[fol. 589] Mr. Gojack. They never gave me any reason, sir.

(Representative Francis E. Walter entered the hearing room.)

Mr. Scherer. Yes; they did. In their letter to you, the State Department informed you that your application was turned down because they couldn't get security clearance. I am asking you whether you reported that reason to the members of your union?

Mr. Gojack. That was no reason.

Mr. Scherer. Whether it was a reason or not, did you ever report that fact to the members of your union?

Mr. Gojack. Mr. Scherer, I have previously testified that I reported on what correspondence I had with someone in the State Department.

Mr. Scherer. I ask you, Mr. Chairman, to direct the witness to answer the question.

Mr. Moulder. The witness is being evasive. The Chair directs you to make a direct answer in response to his question.

Mr. Gojack. On that specific letter?

Mr. Moulder. He asked you whether or not you reported to members of your union or executive board that you were turned down on your application for passport for the reason that you couldn't get security clearance.

Mr. Gojack. Yes; I reported that.

Mr. Doyle. I notice, Mr. Gojack, in answer to our counsel's question, you said "I discussed it with individual members of the board." Do you remember that?

Mr. Gojack. Yes, sir.

Mr. Doyle. In my thinking that is quite different than you discussing the matter with the board in session.

Did you ever report the fact that you had been denied a security clearance with the board as such? I am not talking about individual members outside of the board meeting. You see clearly what I want to know, don't you?

Mr. Gojack. Yes.

Mr. Doyle. There is quite a difference, is there not?

Mr. Gojack. Not the way you put it, sir. I did both for this reason, sir. Our board meets only every 3 months and when circumstances come up in the course of the interim period I frequently discuss matters with members of the board with whom I come in contact. For example, in Fort Wayne there happened to be a number of board members in that area. I consult with them and keep them posted on developments more frequently than I did board members, let's say, who were in Michigan or in areas that I did not travel too frequently.

Mr. Doyle. I can understand that. That is practical. But now will you answer my question? At the first board meeting, official board meeting or at any board meeting after you received this letter stating that you couldn't get

a security clearance, did you officially notify, as the general vice president of that organization, the fact that you had received this letter and that they had denied you a security clearance; or did you tell the board as you stated a few minutes ago what you thought they had turned you down for? There is quite a difference.

Mr. Gojack. Mr. Doyle, I distinctly recall reporting to you a subsequent board meeting, I can't fix the date, that I was turned down, I reported on the correspondence, as I have testified repeatedly I even reported on the personal conference I had with someone here in Washington on it [fol. 590] and that I had given up the project because by that time the opportunity for going on vacation was lost. The reason I asked for the application to be granted immediately after the holidays was that the month of January happens to be a good month to be away. Contracts don't come up until spring and by the time of the next board meeting in March this was a dead issue already. I couldn't have gone if I had gotten the passport.

Mr. Doyle. When you reported to the board your correspondence denying you a security clearance, did you officially thus inform the board, and what did the board do, if anything; what official action did they take if any? I mean as the board, not individually.

Mr. Gojack. I asked the board to do nothing for me in my behalf. This was a personal matter. When I was denied the passport application I felt obligated to report that to the board, let them know I wasn't going to go on the trip as I had discussed I would be going.

After that it was a dead issue as far as I was concerned because had the State Department reversed itself I could not have gone.

Mr. Doyle. There is one further statement. I was impressed yesterday, Mr. Gojack, with your effort to make it clear to this committee that everything you did really was part of the union; the union was so much a part of you that there was hardly anything you could do that

wouldn't involve the union. That is the impression I received yesterday from your wording.

Isn't that what you wanted us to feel about you, that you were so much in earnest and so much the leader of this group of men that nothing could happen to you or to the union that wouldn't hurt both of you?

If that was your statement yesterday—I think the transcript will show that is what you told us yesterday—you must have felt that when the State Department denied you a security clearance it hurt the reputation of the union. Didn't that hurt the reputation of the union in your judgment, that the general manager, general vice president should be denied security clearance involving the security of your nation?

Mr. Gojack. Sir, I did not consider it as such and as I told a number of people, that it is obvious that the State Department only wants those people to travel abroad who will parrot the State Department line at the time and I mentioned that others were denied passports. I remember this fellow in California, this Doctor Pauley, I remember using his name to show our members other people were denied passports and this person—

Mr. Doyle. Other people were not the general vice president of your union.

Mr. Gojack. Mr. Doyle, if I may further explain, if I—while all you say about your understanding that my work is such an integral part of the union is absolutely true. If I took the time in our district board meetings or district conventions just to relate the smears and attacks on our union and myself that occurred in the 3 months since we last met, we would never have time to get down to the business of higher wages and better contracts because we are constantly under attack.

Mr. Doyle. This, sir, was not a smear. This was an official communication from your own Government to you regarding your taking leave from your union as general vice president to go abroad. I think Mr. Gojack, there is quite

[fol. 591] a difference. I frankly am surprised that you, in view of your testimony yesterday, felt you were able to so separate yourself from your own union that you didn't think it was a matter that affected the representation of your union.

Mr. Gojack. Gosh, Mr. Doyle, if you could read our Fort Wayne News Sentinel on what they said about the State Department in that same period, you wouldn't raise the question. They said far worse than I ever have about the State Department.

Mr. Doyle. I have read some terrible attacks against our Government and against our State Department from unions, not many of them.

Mr. Gojack. I am speaking of a Republican newspaper in my hometown.

Mr. Moulder. I make reference to that part of your testimony concerning your activities, speaking in conventions and meetings in opposition to the Marshall plan. You stated that in your opinion it made the rich richer and the poor poorer, or something of that sort. Were you opposing the Marshall plan for the reason that you believed it was not being administered in a proper manner, or were you opposed to the overall plan which was the same line used by the Communists and Soviet Russia in opposing the Marshall plan?

Mr. Gojack. I spoke at a number of our meetings about the administration of the plan because I had garnered a file at least fatter than the file Mr. Tavenner has on me here, from the New York Times and Wall Street Journal and various newspapers about the abuses of this plan, and I constantly referred to it. When called upon to explain by people who asked, "Well, why are you differing with the CIO on this policy, why don't you"—as a matter of fact, I was forced to part company with the Indiana State CIO over this issue. They asked me to go on record that I had to support Truman and I had to support the Marshall plan or get out of the State CIO. I thought this was political dictation. I accumulated these files and referred to

a lot of these abuses, the way we sent tobacco and cigarettes and mothballs and Coca-Cola. We sent a lot of cola over there when they had heavy stockpiles. There was so much dishonesty we paid Marshall plan money to pay a detective agency to look into it.

Mr. Moulder. Was not the general objective of the Marshall plan to prevent spread of communism and help the laboring people in the countries, as well as to aid labor in this country which created employment here?

Mr. Gojack. When General Marshall enunciated his plan at the Boston CIO convention in 1947, I stood up with every other delegate and I applauded it, and I thought it was wonderful, because I was in favor of any plan that would feed the hungry and clothe the naked, I was for it.

Mr. Moulder. Do you know whether or not the Communist Party organization in this country was opposed to the Marshall plan at that time?

Mr. Gojack. No, I have no idea of that.

Mr. Tavenner. Don't you know it wasn't until the meeting of the Cominform that the Communist Party line changed and from that minute on the Communists in this country opposed the Marshall plan?

Mr. Gojack. I don't know anything about that, sir.

[fol. 592] Mr. Scherer. Maybe we can find out from a few questions I am going to ask just why the State Department refused to grant the witness security clearance, and perhaps why he opposed the Marshall plan.

Do you know George Arnold of Peru, Ind.?

Mr. Gojack. I don't recall.

Mr. Scherer. He is the manager of the Dewey Shepherd Boiler Co. of Peru, Ind.

Mr. Gojack. Now that you mention Dewey Shepherd I know George Arnold, I know of him. He broke our union.

Mr. Doyle. He did what?

Mr. Gojack. He broke our union at Dewey Shepherd Boiler Co.

Mr. Scherer. Is it not a fact that you told Mr. George Arnold, and I quote:

If Russia controlled the United States, conditions here would certainly be better.

Mr. Gojack. That is a ridiculous lie.

Mr. Scherer. Did you say anything like that to him?

Mr. Gojack. Nothing at all. George Arnold is about as sane as this lunatic Cecil Scott, especially on the question of unionism and this sort of business. In negotiations with him he raised fantastic charges that because we wanted a nickel an hour raise, we were trying to overthrow the Government. He would say crazy things like you are relating there, in negotiations.

Mr. Scherer. You say now that he said—

Mr. Gojack. No, I am not saying what he said—

Mr. Scherer. If Russia controlled the United States, things would be better?

Mr. Gojack. I don't recall what he said. All I know is that he was a screwball employer who thought that every unionist was an agent of Moscow. He wasn't a sane person actually on this question.

Mr. Scherer. Do you deny that you ever made that statement?

Mr. Gojack. Oh, absolutely.

Mr. Doyle. I think in Mr. Gojack's letter back to the State Department he asked what were his rights of appeal. I think that was in the letter.

Mr. Gojack. Yes.

Mr. Doyle. Did you ever prosecute your right of appeal from the ruling of the State Department that you were a security risk? If you did not, why did you not?

Mr. Gojack. I didn't sir, for the reason that someone who had a conference with me in the Passport Division who was introduced to me as the security officer there—I don't recall his name—told me that there was no right of appeal; that the Secretary of State by law could decide this without even giving any reasons. This gentleman would not even tell me why my security clearance was denied.

Mr. Doyle. Have you ever done anything since the receipt of that letter to ascertain or clear up the matter of your security? If so, what have you done?

Mr. Gojack. I did nothing, sir, because this person informed me that there was nothing that I could do; that there was no recourse to law or anything.

Mr. Doyle. You have done nothing from that date to this, have you?

Mr. Gojack. No. It is a dead issue as far as I am concerned.

[fol. 593] Mr. Doyle. I should think any man's reputation or any union's reputation would be a very live issue. If the chief administrative officer or executive could not get a security clearance, I would not think that was a dead issue. I think it would be a very live issue if it were me. Frankly, I am surprised that you consider it dead. I think it would be very much alive from the standpoint of your reputation and your standing in the country and with your union. I should think a patriotic labor union would not tolerate their executive officer being unable to get security clearance involving the safety of our own Nation. That worries me.

Mr. Gojack. It worries me, Mr. Doyle, that this committee by this hearing is helping a rival union which is headed by two security risks. You are not excited about that at all.

Mr. Doyle. I am worried if any head of any union in my Nation is a security risk. I want to make that clear to you.

Mr. Scherer. Who are the two security risks to whom you refer?

Mr. Gojack. I read their names in the record this morning, Mr. Scherer.

Mr. Scherer. Are they in the record?

Mr. Gojack. Let me say that my membership, I think, votes for me and supports me based on what I do.

Mr. Scherer. And what they do not know about you?

Mr. Gojack. And not what someone here in Washington might say about me. I think that the bulk of our member-

ship happens to be a little more sane on this question of loyalty than some of the people here in Washington. I say that in all sincerity, because I remember reading in the paper just the other day that they are revising the security program because of some abuses.

Mr. Doyle. How many members are there in your union of which you are the head, how many hundred members, approximately?

Mr. Gojack. Some thousands, sir.

Mr. Doyle. Approximately how many thousand?

Mr. Gojack. Well, on the question of my union membership, sir, the figures of my union membership—I think this again goes to questions which are outside the province of this committee. I am going to decline to answer that question—

Mr. Doyle. If you have any objection, I withdraw it.

Mr. Gojack (continuing). For the reasons previously stated.

Mr. Tavenner. Mr. Gojack, I understood you to say that your meetings of the executive board were quarterly. Am I correct in that?

Mr. Gojack. Yes, with the further explanation that upon occasion, special meetings might have been called at times.

Mr. Tavenner. When was this first meeting held at which you say you talked with them about the matter of the refusal or denial of your passport?

Mr. Gojack. May I see this document?

(Document passed to the witness.)

Mr. Gojack. I don't recall the exact dates. This last communication to Mrs. Shipley was February 25. It was after that time that I had the conference here. Whether or not that was before our March meeting or afterwards, I just don't recall.

Mr. Tavenner. On what date in March was your meeting held?

Mr. Gojack. Usually the last of March, but I don't recall whether I had the meeting with the person in the Passport

[fol. 594] Division here in March or in April. I just don't recall. I would have to check the records back home.

Mr. Tavenner. But your meeting was in March?

Mr. Gojack. The first meeting would have been in March; yes, sir.

Mr. Tavenner. How long after that would it have been until you held your next meeting?

Mr. Gojack. The following June, sir.

Mr. Tavenner. The last letter which we discussed here was your letter of February 25 to Mrs. Shipley. Did you receive a reply to that letter?

Mr. Gojack. I recall receiving some word from them about the possibility of speaking to someone. I don't remember whether it was a letter or what.

Mr. Tavenner. I hand you a letter of March 20, 1952, in reply to that letter. Will you read it into the record, please?

Mr. Gojack (reading).

The Department has received your letter of February 25, 1952, with further reference to the Department's decision declining to furnish you with passport facilities. I am unable to elaborate on the information set forth in the Department's letter of February 19, 1952, but if you desire to call at the Department an officer thereof will discuss your case with you in as much detail as is permitted under the security regulations. If you desire to submit any material in connection with a request for the reconsideration of your case the question of your membership or nonmembership in organizations listed as Communistic or subversive by the Attorney General would be pertinent.

Mr. Tavenner. Wasn't that a plain indication to you that your difficulty arose out of your activity in organizations listed by the Attorney General as Communist, and weren't you given an opportunity to refute it if it was not true?

Mr. Gojack. I took advantage of the invitation to discuss this with someone, to try to get some more details. I was not aware that the measuring stick was the Attorney General's growing list, and I am fully aware that in the course of my years of activity in the union, I have participated in

work in behalf of our membership and people generally, which has later become suspect, has been placed on this growing list.

Mr. Moulder. It is a fact, then, the reason you were not cleared for security was because of the State Department's investigation and the decision that you were a Communist?

Mr. Gojack. No. I was never given that understanding, sir.

Mr. Scherer. Well, were you a Communist at that time?

Mr. Gojack. Mr. Scherer, to that question and to every other question dealing with my political beliefs or affiliations, I am going to decline to answer for the reasons previously stated.

Mr. Tavenner. Did you report to your executive group what this letter said about your privilege of furnishing the State Department with further information regarding your membership or nonmembership in organizations listed as communistic or subversive by the Attorney General? You didn't tell them that, did you?

Mr. Gojack. As I recall, I explained to the board—as a matter of fact, to a district convention, a full council meeting—what the difficulties were with the passport, and that this was a dead issue at that time, but that people couldn't get a passport if they had signed petitions—

[fol. 595] Mr. Tavenner. I am not talking about people. We are talking about you. Did you report that you were denied a passport because you were on the Attorney General's list of Communist or subversive organizations?

Mr. Gojack. I did so report to my council, and on repeated occasions I reported to my union membership my activities, whether they be for peace, whether they be for civil rights. I happen to be a strong believer in civil rights, and I have supported many unpopular causes.

Mr. Tavenner. All right, one of the organizations on the Attorney General's list is the Communist Party. Did you advise your members that you were not a member of the Communist Party or that you were a member?

Mr. Gojack. As I said here earlier this morning, sir, I treat my relationship with my union members differently than I do this committee.

Mr. Tavenner. Just answer the question. Did you report that to your executive board, or not?

Mr. Gojack. Oh, on a number of occasions, not just my executive board but at membership meetings.

Mr. Tavenner. Let's talk about the executive board. That is what we are asking now. Did you report to them that you were denied a passport and that you either were or were not a member of the Communist Party?

Mr. Gojack. No one on that executive board ever asked me that question. I never thought of it.

Mr. Tavenner. You never told them?

Mr. Gojack. The thought never occurred to me that I have to answer to my board on that. They know me for what I am. I have answered the question specifically, as I testified here this morning, when posed the question by various members of our union. I felt free to answer the question and to deny membership. I treat the question of my union differently than I do my relationship to this committee.

Mr. Tavenner. I am asking you the fact in a particular instance, and it does not require a general answer. This is directed to a special matter. Did you furnish the State Department with any information or material bearing on your membership or nonmembership in organizations listed by the Attorney General as Communist or subversive?

Mr. Gojack. I don't know how many organizations are on that list.

Mr. Tavenner. The Communist Party is one of them. Did you furnish any information regarding it?

Mr. Gojack. I recall telling this security officer, or whoever he was, in the State Department that I signed a non-Communist affidavit in 1949 and 1950.

Mr. Scherer. When you signed that affidavit, were you telling the truth?

Mr. Gojack. Mr. Scherer, yesterday—

Mr. Scherer. Not yesterday; today, now.

Mr. Gojack. On this stand, I read into the record while under oath that I signed and notarized that affidavit.

Mr. Scherer. I remember that very well. My specific question now is, when you signed that affidavit to which you have just referred, saying that you were not a Communist were you telling the truth? The statute of limitations [fol. 596] has run against any possible prosecution for perjury for signing that affidavit falsely, if you did sign it falsely. It has not run against the question I am asking you. Will you answer that question: whether or not when you signed that affidavit you were not a Communist, whether at that time you were telling the truth in that affidavit.

Mr. Gojack. Mr. Scherer, you are wrong about the statute of limitations. As I testified here yesterday, I have an affidavit currently on file. I would like to say now, Mr. Scherer, that throughout this hearing you have been—

Mr. Scherer. I am not wrong about the statute of limitations.

Mr. Gojack. You have been extremely provocative toward me. You have tried to provoke me into arguments here. At this point I refuse to be provoked any longer. I am going to decline to answer your specific questions for the reasons previously stated at length.

Mr. Doyle. Mr. Gojack, I am quite sure I have not tried to provoke you. I had not been aware that Mr. Scherer had. I think that is an erroneous appraisal by you of him.

I remember yesterday—and I am sorry I was not here this morning; I was attending another committee—I do remember that yesterday I sincerely tried not to provoke you but to get from you a frank statement of whether or not you had been a member of the Communist Party. I am sure we did not get it while I was here, and I was here all day yesterday. I do not know whether you have answered that question frankly today or not.

Mr. Scherer. He has taken the first amendment a number of times.

Mr. Doyle. Today?

Mr. Scherer. Yes.

Mr. Doyle. As I stated to you yesterday, your statement that you filed that affidavit does not remove my sincere inquiry as a Member of Congress as to whether or not you have ever been a member of the Communist Party, because I have known of some people who filed that oath who became members of the Communist Party again within a few hours afterward. That oath which you filed was signed, as I recall, August 24, 1954. My memory is correct, is it not? Have you been a member of the Communist Party since then? That is a fair question, is it not? I do not mean whether you carry a card or not, but to all intents and purposes, in your own mind, are you a member of the Communist Party?

The reason I feel justified in asking that question is that the Communist Party has been declared to be a subversive outfit. If I did not think it was, I would not sit here on this committee and ask you.

Mr. Gojack. Mr. Doyle, that is precisely why I have invoked the first amendment in this hearing. When you speak of what is in my mind, that is the thing I am disturbed about, that a committee of Congress can ask me what is in my mind. I understand the Constitution of the United States prohibits a search into people's minds.

Mr. Doyle. I only asked you that, sir, because deceit and fraud and misrepresentation come from a person's mind. In a preliminary way, I indicated to you that I have known of cases where men and women have signed those affidavits to get by the Taft-Hartley law, without ever intending to get out of the Communist Party except for the purpose of filing that affidavit.

[fol. 597] I think it is entirely possible that you might have been in that class, because this State Department letter challenged you with your membership in Communist outfits, and I have not heard you ever deny that you were a member of a Communist outfit, not before this committee or before the State Department. You have not testified

here that you went up there and denied to the State Department that you were a member of the Communist Party, have you? You have not told us that you went up there and tried to clear your skirts of being a member of Communist-front organizations. I do not believe that you did, because you have not volunteered the information that you did so. I just assume if you had not been a member of the Communist Party, the first thing you would have done would have been to go up to the State Department and say, "You have made a mistake. I have never been a member of the party," and put them to proof. You have never done that.

I think the burden is on you, young man, not on us.

Mr. Moulder. Will you repeat your question, Mr. Doyle, as to whether or not he has ever been a member of the Communist Party? He has not answered it.

Mr. Doyle. I repeat the same question: Have you been a member of the Communist Party, either before you signed the affidavit or during the time or period that you may have made your affidavit out, or since.

Mr. Gojack. Mr. Doyle, I respectfully decline to answer your question because I believe that what that question does to me is to judge me guilty without benefit of trial. I have repeatedly reiterated my basic objections to this hearing.

Mr. Doyle. We are not adjudging anybody guilty. No, Mr. Gojack. Of course, if you think it is a matter of criminal intent and participation in a conspiracy to be a member of the Communist Party, then I understand why you might conclude that you are being found guilty without a trial. But we are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

Mr. Gojack. Mr. Doyle, may I respectfully say that if this investigation occurred in 1949 or 1950, or something like that, 1951, your position there would have some merit, in my judgment; but the timing of this hearing, just before a couple of labor board elections, convinces me that you are not seeking what you have stated is the purpose of this hearing. I am convinced that this is a union-busting venture.

Mr. Doyle. Of course, that is an excuse for your not answering. That is the way I appraise your answer.

Mr. Gojack. I am not answering it for the reason of any excuse. I want you clearly to understand my position on that. My position on declining to reply to questions concerning my beliefs and faiths is based on my strong belief that this committee has no right to inquire into them.

Mr. Doyle. I do not intend to inquire into the question of your beliefs or faiths, but I ask you frankly whether or not you have ever been a member of the Communist Party. [fol. 598] That is not a question of belief or faith. It is a question of loyalty to the United States. In view of the fact that you know mighty well and you have known for years that the Communist Party in America is designed as part of an international conspiracy to overthrow our constitutional form of government, I have concluded—and I want to be frank with you—I have concluded since hearing you yesterday and today that there was a time, whether today or not, I do not know, that you were entirely too intimately tied up with the Communist Party, because you have never denied it. You have never had the backbone as the leader of thousands of American men and women to stand out as clean as a hound's tooth when it came to the question of Communist Party membership and deny it or, if you had been a member, to get out of it and invite your union members to do the same thing.

Have you ever criticized the Communist Party? If so, where and when have you ever criticized the Communist Party?

Mr. Gojack. The reason I am smiling, Mr. Doyle, is—the fact of the matter is someone once asked me—I don't know how to answer your question specifically because I have never dealt with the question. Someone once asked me if I ever criticized anything done in Russia. I don't know anything about Russia. I have never been there.

Mr. Doyle. The Communist Party of the United States is not in Russia. It is quite closely identified, I think, with some members in your union. You can't tell me that in all the 18 years, more or less, that you have been in that union, you have never discussed the subject of communism in connection with your labor union meetings or with your board.

Mr. Gojack. Sir, I can truthfully say to you that in every union meeting I have participated in, whether it be at a general executive board meeting, a local union meeting, or a district council meeting, the question of Communist activity was never a subject for discussion except where someone might have falsely accused this union of it and we were answering those accusations.

Mr. Moulder. Wasn't that question discussed at the time the CIO disassociated your organization from the CIO and kicked your organization out of the CIO? It was discussed then, was it not?

Mr. Gojack. We withheld our per capita tax before we were kicked out. We departed company from the CIO before they expelled us. I was a member of the general executive board that voted, after receiving certain directions from our district convention, to withhold per capita tax, because we were being obligated to accept political dictation, and our union feels strongly that our constitution, which says the members run the union, must be our yardstick. When the newspapers were full of this baloney about the CIO charge of Communist domination, we explained that at meetings, and we proved, I think to the satisfaction of our union members in our area, at least, that the real reason was that we would not accept political dictation from the top.

Mr. Doyle. Then, Mr. Gojack, you wish to correct your testimony of a minute ago when you said that it was never discussed in union meetings or board meetings, because now you say you explained it to your membership.

Mr. Gojack. No. I say we explained the false charge of communism.

[fol. 599] Mr. Doyle. Then you did discuss the subject of communism, did you not, in your union?

Mr. Gojack. We discussed the general false charge of communism against our union, yes.

Mr. Doyle. At the time you were explaining to your union that this charge of the CIO was false, it is a fact, is it not, at that very time you were a member of the Communist Party?

Mr. Gojack. Mr. Doyle, to that and every question about my political affiliations and beliefs, I respectfully decline to answer on the grounds previously stated.

Mr. Doyle. That is all. I hope the time will come, young man, while you are still a leader of American working men and women, when you will place the welfare of your Nation high enough up above your own personal convenience that you will see to it that the Communist influence in your own union is cleaned up wherever its exists.

Mr. Gojack. Mr. Doyle, it is precisely because of my strong feeling for this country that I take the stand I do here to protect the right of an individual to think as he sees fit in this country, to have some freedoms left.

Mr. Tavenner. Mr. Gojack, in answer to one of the questions of Mr. Doyle you indicated that there never was a time when the question of communism was brought up in your union or your board. I understood you further to say or to indicate that you had never endorsed communism or that you had never criticized communism in a union meeting. Am I correct in that latter statement?

Mr. Gojack. Sir, we never discussed or criticized communism, socialism, capitalism, republicanism, know-nothingism, and a million other isms you could think up.

Mr. Tavenner. Did you attend a meeting of the ninth district convention of your union in Fort Wayne on March 26 and 27, 1949?

Mr. Gojack. Very likely, sir, yes. I don't recall the exact dates.

Mr. Tavenner. Was there a resolution offered at that convention in the following language:

Whereas it is now a well established fact that the world movement of communism has the goal of violent overthrow of all opposing forms of government, destruction of all property and civil rights of individuals, and

Whereas, The American Communist Party is a part of this world organization and is subject to its policies and directions: Therefore be it

Resolved, That this union assembled in its 14th international convention does hereby declare that it is our decision that membership in the American Communist Party or in any organization controlled and directed by the American Communist Party does not constitute a form of religious or political belief; and it is hereby

Resolved, That all officials or representatives of this union or subdivisions thereof shall render all rulings or interpretations in accordance with this resolution.

It is hereby recommended that the above resolution be adopted by local 901 and recommended for adoption of the 14th international convention of the UERMWA.

Do you recall that resolution being offered?

Mr. Gojack. Sir, the 14th international convention of the UE was not held in Indiana or in Michigan.

Mr. Tavenner. Was this resolution considered by district 9 before the 14th convention was held that we spoke of?

Mr. Gojack. I don't recall whether when the group from local 901 headed by this Dallas Smith, who is now working for the General Electric Co. in an employer capacity—whether they brought this same resolution in to our district [fol. 600] council, as the language there obviously indicates it was referred to the 14th international convention. I do

recall some such resolution being presented at our district council, yes.

Mr. Tavenner. Weren't you chairman of the meeting?

Mr. Gojack. I was chairman of the meeting when such a resolution was brought forward.

Mr. Tavenner. You stepped down from the chairmanship and argued against the adoption of the resolution, didn't you?

Mr. Gojack. Sir, the way our district councils operate, all resolutions are referred to a resolutions committee.

Mr. Tavenner. Will you answer the question, please? Did you step down from the chairmanship and take the floor and argue against the adoption of this anti-Communist resolution?

Mr. Gojack. I don't recall the exact date, whether it was that convention or maybe a similar resolution at another convention, but I am certain that, along with many of our members and delegates to conventions, I took the floor; and whenever I took the floor to speak on it, I stepped down from the chair to debate an issue pro or con.

Mr. Tavenner. Will you answer the question?

Mr. Gojack. I remember, sir, clearly engaging in a debate against some proposals by this Dallas Smith group. As to whether or not it was on that particular resolution or another one, I don't recall. I will be happy to check our minutes and refresh my recollection and give you a very specific and definite answer.

Mr. Tavenner. Didn't you take the position before your union at that time that you were a candidate for election as a delegate to the national convention, and you wouldn't go if such a resolution were adopted?

Mr. Gojack. I don't recall what position I took on that or any other resolution, sir. I am sure I had better reasons than that which Mr. Appell suggests to you now.

Mr. Tavenner. Is it true? That is the point. Whether there was a better reason or not, is it true?

Mr. Gojack. I don't recall all the reasons or whether that was one of the reasons I expressed. I don't even recall whether I took a position on that specific resolution. If you

will give me a copy of the minutes—I see that Mr. Appell has the IUE-CIO propaganda leaflets in his folder there.

Mr. Tavenner. You don't see anything relating to minutes regarding that matter at all. You are drawing again on your imagination.

Mr. Gojack. I just saw Mr. Appell had some IUE leaflets there, and that is the reason I suggested that. The IUE leaflets were based on some minutes that were stolen from our files.

Mr. Tavenner. And therefore you surmise that I have obtained this information from that source, which idea is wholly untrue.

Mr. Gojack. No, sir. I am suggesting that if you have the minutes and can show them to me to refresh my recollection, I might be able to give you a more definite answer.

Mr. Scherer. You mean you want to conform your testimony to those minutes.

Mr. Tavenner. You should be able to recall without difficulty whether you opposed in one of your conventions the adoption of an anti-Communist resolution.

[fol. 601] Mr. Gojack. Sir, in many conventions, national and district, I opposed any proposals for our union to become a McCarthyite group.

Mr. Tavenner. You are convinced, then, that you did oppose the adoption of this resolution at a meeting of which you were chairman?

Mr. Gojack. Sir, I am neither denying nor affirming it, because I don't recall the specific resolution.

Mr. Doyle. Mr. Chairman, may I interrupt here. While you were at the phone a minute ago, the witness volunteered very clearly that he would check on the minutes as to this resolution and see what position he did take.

Do you remember that, Mr. Gojack? You volunteered to check and refresh your memory as to what you had done in connection with this resolution.

Mr. Gojack. Yes; but I don't think that is necessary, because—

Mr. Doyle. Just a minute. You volunteered.

Mr. Gojack. That is right.

Mr. Doyle. Mr. Chairman, I move that the committee accept the offer of Mr. Gojack and have him furnish the committee with a certified copy of the record of the minutes of that meeting where that resolution was discussed, and see what he did do, if anything.

You made the offer, sir, and we are merely accepting it.

Mr. Scherer. I second the motion.

Mr. Moulder. Motion has been made and seconded that the offer made by Mr. Gojack be accepted by the committee.

Mr. Doyle. That will help you to refresh your memory and give us the record.

Mr. Scherer. I ask, Mr. Chairman, that you direct the witness to furnish such a copy.

Mr. Moulder. And it is so ordered by the committee.

Mr. Gojack. We will be glad to send you those minutes. What convention is that, now? The 14th international?

Mr. Tavenner. It is in 1949. That is not only the minutes of your national convention, but it is the minutes of the meeting at which you were the chairman, where this resolution was offered.

Mr. Gojack. How soon do you want that?

Mr. Tavenner. Just as soon as it is convenient for you to get it. In the next 3 or 4 days, if convenient, or a week.

Mr. Gojack, let us return to the subject on which I was interrogating you. You have read into the record Mrs. Shipley's letter to you of March 20, in which it was stated that if you desired to submit any material in connection with a request for reconsideration of your case, the question of your membership or nonmembership in organizations listed as communistic or subversive by the Attorney General would be pertinent. Did you furnish to the Department of Justice any information regarding your membership or nonmembership in such organizations?

Mr. Gojack. No, sir. As I indicated earlier, I was given to understand that nothing could be done about it. The Secretary of State was supreme in this matter, so I dropped the issue.

Mr. Tavenner. You stated that you conferred with a representative of the State Department, did you not? Was that after the receipt of this letter on March 20, or before?

Mr. Gojack. I presume it was after. I was given the invitation to consult. I don't recall the dates.

[fol. 602] Mr. Tavenner. How did you confer with the representative in the State Department?

Mr. Gojack. I appeared at the Passport Division and was referred to a gentleman whose name I don't recall.

Mr. Tavenner. Do you recall whether it was Mr. Ashley J. Nicholas?

Mr. Gojack. I am sorry, I don't recall the gentleman's name.

Mr. Tavenner. Do you recall what he advised you?

Mr. Gojack. I recall his telling me that it would be impossible for me to challenge this because the Secretary of State didn't have to give any reason at all, according to the law. If he said "no passport," that was it. There was no recourse.

Mr. Tavenner. Weren't you invited again and advised that you could submit material to them which would be considered?

Mr. Gojack. As I recall, I started off by asking this gentleman whether or not I was denied this because of my registration as a Republican in Fort Wayne.

Mr. Tavenner. Mr. Gojack, you didn't discuss with them seriously the question of your subversive connections by referring to your having registered as a member of the Republican Party?

(Representative Morgan M. Moulder left hearing room.)

Mr. Gojack. As a matter of fact, I started off the conversation by saying that I thought this country was coming to a pretty pass when an individual like myself could not get a passport, and I asked him, and I will admit quite frankly facetiously, whether or not it was because I was a registered Republican and the State Department at that time was controlled by Democrats.

Mr. Tavenner. To sum up the whole thing, did you advise the gentleman who spoke to you that you would submit a statement to the Passport Division upon your return to Indiana?

Mr. Gojack. As I recall, he suggested if I wanted to carry the thing further, I would have to write a detailed account of everything I ever belonged to and go into this whole matter. I told him I would give some thought to it, and I let it go at that.

Mr. Tavenner. Do you deny that you told him that you would make a report upon your return to Indiana?

Mr. Gojack. Sir, I don't recall indicating to him that I would send back a report.

Mr. Tavenner. You are certain of this: that you did not make any further report and followed the matter no further after your return to Indiana?

Mr. Gojack. Yes, just as positive as I am that I am not permitting this committee to inquire into my political beliefs and affiliations.

Mr. Tavenner. Did Mr. Nicholas, in discussing your problem with you, discuss any organizations?

Mr. Gojack. I recall him reading off some organizations, including some that I had long since forgotten about.

Mr. Tavenner. Was the Communist Party of the United States one of them?

Mr. Gojack. I don't recall. The Boy Scouts might have been. I remember thinking it was pretty ridiculous, some of the organizations that were read off.

Mr. Tavenner. Did you consider it ridiculous—

Mr. Doyle. Mr. Tavenner, just a minute.

[fol. 603] Don't try to make a play on the Boy Scouts. You know full well that the Secretary of State's Office did not mention Boy Scouts to you. Why do you throw that into your testimony?

Mr. Gojack. Because in this conversation with this gentleman—I don't recall who it was—I made a point about the fact that, "Do you have my Boy Scout record in there?" They seemed to have everything that I had ever done in my life.

Mr. Doyle. I don't appreciate your bringing in the name of the Boy Scouts here as possibly a subject of discussion as to whether or not you were a member of that, because you know there never been anything subversive in connection with the Boy Scouts. He was only talking to you about Communist-front organizations and the Communist Party.

Excuse me, Mr. Counsel and witnesses, but I felt that his use of the Boy Scout organization in that connection should not go unchallenged.

Mr. Tavenner. Did he discuss the Communist Party with you?

Mr. Gojack. I don't recall, sir.

Mr. Tavenner. You stated that he had a list of various organizations that you belonged to. That is when you made this reference to the Boy Scouts. Did he have a statement of your having belonged to the Communist Party?

Mr. Gojack. I don't recall. He had a folder there. He talked about organizations. I just don't recall.

Mr. Tavenner. You wouldn't remember whether there was documentary evidence relating to your membership in the Communist Party or not?

Mr. Gojack. He didn't show me the folder, sir. As a matter of fact, when I asked him to indicate just what was in the folder, he said that the folder was classified information and he couldn't show it to me.

Mr. Tavenner. I desire, Mr. Chairman, to offer in evidence, for identification purposes only, and to made a part of the committee files, the various documents relating to his passport, the application for passport and the correspondence. I request that the application for passport be marked "Gojack Exhibit No. 2."

Mr. Doyle (presiding). It will be so marked and received.

Mr. Tavenner. The letter of January 18, 1952, as "Gojack Exhibit No. 3."

Mr. Doyle. It will be so marked and received.

Mr. Tavenner. The letter of February 4, 1952, as "Gojack Exhibit No. 4."

Mr. Doyle. It will be so marked and received.

Mr. Tavenner. The letter of February 19, 1952, as "Go-jack Exhibit No. 5."

Mr. Doyle. It will be so marked and received.

Mr. Tavenner. The letter of February 25, 1952, as "Go-jack Exhibit No. 6."

Mr. Doyle. It will be so marked and received.

Mr. Tavenner. And the letter of March 20, 1952, as "Go-jack Exhibit No. 7."

Mr. Doyle. It will be so marked and received.

Mr. Tavenner. I asked you a few questions earlier in your testimony this afternoon regarding an organization in Paris by the name of Metal Workers Trade Union. When you filed your application for passport, did you propose [fol. 604] to make contact with that union on your arrival in Paris?

Mr. Gojack. I knew nothing of that union in that connection, sir.

Mr. Tavenner. You had no interest whatever in that union?

Mr. Gojack. Not in that union specifically. I would naturally have interest in the trade-union movement of any country I visited, as a trade unionist, but not any specific union, sir.

(Representative Morgan M. Moulder returned to hearing room.)

Mr. Tavenner. The meetings of your executive board which you referred to as having attended were in 1952. Were the meetings of your executive board held on the same plan, that is, quarterly, during the year 1951?

Mr. Gojack. Yes. As a matter of fact, since I have been in this district council.

Mr. Tavenner. When was your meeting held just prior to March 27, 1951? When would the last meeting prior to that have been held?

Mr. Gojack. Either December, or in some cases at the general executive board meeting which was in December and which we tried to follow with our district council board

meetings, if that were too close to the holidays, some years we would have that quarterly meeting early in January of the following year; either in December or January.

Mr. Tavenner. When would the next meeting have been held after the January meeting?

Mr. Gojack. The March meeting, which would be the day prior to the district council convention.

Mr. Tavenner. What would that date have been in 1951?

Mr. Gojack. That would have been the day before the district council meeting. If the district council meeting was March 26, it would have been March 25.

Mr. Tavenner. Then you may have had a meeting of your executive board in March but prior to the 27th of March?

Mr. Gojack. Oh, no doubt we did have. If the council meeting was March 26 and 27, the board meeting would have been held on the 25th. I am certain of that.

Mr. Tavenner. Did you attend your executive board meeting held in March of 1951?

Mr. Gojack. I am almost certain, sir. I don't recall missing any of our board meetings.

Mr. Tavenner. Am I correctly stating that you also attended the one in January of 1951?

Mr. Gojack. Or December 1950, whichever it was.

Mr. Tavenner. Whichever month it was held.

Mr. Gojack. Yes, sir.

Mr. Tavenner. Do you recall whether at either of those meetings you discussed any desire on your part to establish contact with a trade-union organization in Paris?

Mr. Gojack. No, I don't recall discussing a specific contact. I remember one time—I am not even sure it was that year—the question came up of receiving information from trade unions in Europe because of the interest of our locality. We had plants in our district that had plants in Europe.

For example, the Harvester plant in Louisville, which at one time was in our district. There was a Harvester plant outside of Paris. We were organizing a Burroughs

plant in Detroit, and they had one in Scotland. There was [fol. 605] a Wayne Pump plant in Fort Wayne; there was a Wayne Pump plant in London.

On a number of occasions we discussed the advisability of making contact with unions in Europe for exchange of information, and actually had such exchange. I remember specifically with Wayne Pump we received communications from the British trade unions about conditions and wages, and in fact, a copy of their contract at the pump plant in England.

Mr. Tavenner. Did you have any correspondence of any character with the organization I mentioned, the Metal Workers Trade Union in Paris?

Mr. Gojack. Nothing of that nature, sir.

Mr. Tavenner. Are you acquainted with Russell Nixon?

Mr. Gojack. Yes, I know Russ Nixon.

Mr. Tavenner. Was he known to you to be a member of the Communist Party?

Mr. Gojack. Russ Nixon is known to me to be a Washington representative, legislative representative of our union.

Mr. Tavenner. Yes, we know that. Will you answer the question, please?

Mr. Gojack. To this question, sir, and any question about any other individuals regarding political beliefs or affiliations, sir, I respectfully decline to reply on the grounds on which I am challenging the jurisdiction of this committee.

Mr. Moulder. Do you not realize that the courts have held that the Communist Party is not a political organization, that it is not a political party?

Mr. Gojack. Frankly, I don't know what it is in terms of the court decisions. I read the other day where a fellow was convicted in Chicago for 5 years for being a member of it, under the Smith Act. I am not keeping pace with these court decisions.

Mr. Scherer. Then it would not be a political party if you could be convicted and sentenced for 5 years for belonging to it. It is a criminal conspiracy as much as any other conspiracy on the Federal criminal statutes.

Mr. Doyle. Mr. Scherer, may I supplement your observation by saying, assuming that the finding of the Federal court was according to the evidence and law, it would mean that this committee could not possibly be inquiring into your political affiliations when we are asking you whether or not you are a member of the Communist Party, because the court has held that the Communist Party is not a legitimate political party, as I understand Mr. Scherer's observation.

Mr. Gojack. Sir, I am neither a lawyer nor a Government expert on this question. I remember reading in the New York Times the other day where a Multer, one of your fellow Congressmen from Brooklyn, said that under this new law to outlaw Communists, the Communist Control Act of 1954, the one that Humphrey tacked some amendments onto—according to that one, he stated President Eisenhower could be proven a Communist. I don't know what the legal—

Mr. Doyle. May I just sincerely observe, Mr. Gojack, you may not be a lawyer, but you are a very able and very well-read young man, apparently. You are a very well-informed labor union leader. I say that because that is my impression from your testimony. You do not need to apologize for not being well read and well informed, because [fol. 606] manifestly you are, and you are a very able witness, very, very well informed in all the areas in which you are being questioned.

Mr. Gojack. Thank you, Mr. Doyle.

Mr. Scherer. The question still is—

Mr. Moulder. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party? I am just asking whether or not you know that.

Mr. Gojack. Sir—

Mr. Moulder. Do you or do you not know? I am not asking you to state whether or not he is, but whether or not you know.

Mr. Gojack. Sir, I respectfully submit that that question cannot be propounded to me by this committee because it seeks to expose someone, and I don't think that the law under which this committee operates was set up for exposure purposes. My understanding is that that is what the courts are for, to expose people.

Mr. Scherer. Their job is to judge, not to expose. It is the job of this committee to expose Communists. That is one of its primary duties, to expose Communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions.

Mr. Moulder. Do you decline to answer that question?

Mr. Gojack. Yes, sir, on the grounds previously stated.

Mr. Tavenner. May I suggest that he be directed to answer.

Mr. Doyle. I move he be directed to answer, Mr. Chairman.

Mr. Moulder. You are directed to answer the question.

Mr. Gojack. Sir, I respectfully decline on the grounds previously stated.

Mr. Tavenner. How long has Mr. Russ Nixon been legislative representative of the UE?

Mr. Gojack. I don't recall the exact year he was appointed, sir. It was sometime in the early forties, if I remember correctly, prior to his enlistment in the service. I came to know him as the legislative representative in the early forties. I just can't fix the exact date or year.

Mr. Tavenner. Mr. Nixon was identified by a witness before this committee as a member of the Communist Party and as having attended Communist Party meetings here in Washington, composed of representatives of various groups, sending labor representatives and other persons here to Washington for lobbying purposes. After that testimony was given and made public, did the UE ever bring Mr. Nixon before any of its bodies or committees to determine whether or not he had an answer to the accusation?

Mr. Gojack. I don't understand your question at all, Mr. Tavenner. Do you mean, did we ever bring Mr. Nixon on trial in the union?

Mr. Tavenner. Not on trial. Did you ever bring him in or request him to make any explanation of the testimony that was given against him before this committee?

Mr. Gojack. Sir, our union is not in the business of—

Mr. Tavenner. Just answer the question, please.

Mr. Gojack. No.

Mr. Tavenner. It doesn't require an argument. Did you say "No"?

Mr. Gojack. I said "No," sir, and I want to explain my answer.

Mr. Tavenner. All right, then, explain it.

Mr. Gojack. If our union brought up on trial or called for some explanation on the part of every individual in it [fol. 607] who has been slandered or smeared—take, for instance, just this fellow Matusow—if the people he named that he came across—

Mr. Tavenner. The answer is not at all responsive to the question, Mr. Chairman.

Mr. Gojack. I don't want to get argumentative.

Mr. Doyle. Before counsel proceeds, may I say I am sure the three members of this subcommittee are delighted to have sitting with us this afternoon a distinguished Member of the House of Representatives who does not happen to be a member of the Un-American Activities Committee—Mr. Forrester of Georgia. I am sure we are glad to have him sitting with us.

Mr. Gojack. And I am very glad to know the gentleman.

Mr. Tavenner. Due to the fact that you have gone out of your way so far as to mention three or four times during the course of your testimony that you had had only seven grades at school, and due to the emphasis that you have put on that, I think I should like to correct you on that. Didn't you have 4 years of high school, also?

Mr. Gojack. No, sir, I did not.

Mr. Tavenner. Then why did you put it in your selective service questionnaire, where it says:

I have completed 8 years of elementary school and 4 years of high school.

Was your recollection better then than it is now?

(The witness conferred with his counsel.)

Mr. Doyle. Maybe that is a fact that is not supposed to be within his own knowledge.

Mr. Scherer. Will you withdraw your question?

Mr. Tavenner. Yes. I withdraw my question.

Mr. Scherer. I am asking the witness which time was he telling the truth, today or when he signed his selective service application.

Mr. Gojack. About my education?

Mr. Scherer. Yes.

Mr. Gojack. Every time I said I had seven grades of schooling, I was telling the truth. As to this typewritten business on my application, I don't even recall filling this thing out.

Mr. Scherer. It is your application, is it not?

Mr. Gojack. My signature is on it. I don't recall who typed it. I might have had my wife or someone else type it. It was filled out in 1941. I wasn't a very good typist then. Since then I have learned to type rather well.

Mr. Scherer. Is that your answer?

Mr. Gojack. Yes, that is my answer.

Mr. Scherer. May I see the application, Mr. Counsel?

Do you remember, Mr. Witness, the circumstances of the signing of this application?

Mr. Doyle. Before the witness answers that question, I move that the voluntary remark by the witness in which he referred to Mr. Scherer as the prosecutor be stricken out as purely an impertinent and improper remark, designed to facetiously approach the question which Mr. Scherer was going to ask.

Mr. Moulder. It is so ordered.

(Remarks by the witness stricken from the record.)

Mr. Gojack. May I say something in explanation, Mr. Doyle. I am very sorry. I have been on the witness stand in some labor injunction hearings, and I have had questions shot at me by prosecutors, and inadvertently he sounded to me like a prosecutor, and I should have said [fol. 608] "Mr. Congressman," but to me he has been acting like a prosecutor here today.

Mr. Doyle. Of course, your comeback to Mr. Scherer when you said, "Aren't you the prosecutor?" in my judgment belittles your explanation.

Mr. Moulder. Let us proceed.

Mr. Gojack. Mr. Doyle, may I add, I agree with you when you said you were not provocative. You were not here this morning. I felt I was under serious provocation on the part of Mr. Scherer. I am sorry if it has given you the impression that I have been argumentative here. I am trying very hard not to be.

Mr. Scherer. You have behaved very well this afternoon, by comparison.

Now, witness, do you recall the circumstances of the execution of the selective-service questionnaire?

Mr. Gojack. No; I do not recall, Mr. Scherer.

Mr. Scherer. Even the fact that it was sent to you by your local board and that you filled it out and returned it to them?

Mr. Gojack. Sir, I would not have remembered the year had it not been for the fact that it was just handed to me and I saw that I signed it in 1940. I don't recall it.

Mr. Scherer. Irrespective of the year, don't you recall that the questionnaire was sent to you by the selective-service board, and that you filled it out and returned it to them?

Mr. Gojack. Yes; I recall that. I notice also that it is typed, and I suggested the possibility that whoever typed it for me might have attributed to me more education than I have.

Mr. Scherer. Did you read it before you signed it?

Mr. Gojack. Well, I am not sure whether I read that document carefully, in the same way that I don't think a lot of people who deal with documents, like you Congressmen, yourselves, have the time to read every fine letter or, say, every bill that you vote on. I don't read every document that is in my office.

Mr. Scherer. It is pretty important when you fill out a questionnaire for the draft, is it not? That is not like any of the numerous documents you may sign in connection with your union activities, is it?

Mr. Gojack. My tax reports are pretty important, too, but I don't read every fine print on the tax report. I don't make enough money to fill out the long forms.

Mr. Scherer. But you furnish the information, do you not?

Mr. Gojack. Yes.

Mr. Scherer. Let's see whether the other statements that you made in this questionnaire are correct.

You were living at 41 South Ludlow Street at that time, Dayton, Ohio, were you not?

Mr. Gojack. To the best of my recollection; yes. I was traveling away from home at that time, if I remember correctly. That was my home address. That is where my family was.

Mr. Scherer. That was your permanent registration address?

Mr. Gojack. That was my home address, yes, sir, but I specifically recall working during that period in Michigan, away from home.

Mr. Scherer. If you did not type this questionnaire, you had to give to somebody your social-security number, did you not? Your social-security number was 287-09-1208.

[fol. 609] Mr. Gojack. Frankly, sir, I just don't recall the circumstances under which that form was filled out.

Mr. Scherer. You have your social-security card? Let us check and see.

Mr. Gojack. I was doing just that.

(Witness taking social-security card from his wallet.)

Mr. Gojack. It is 287-09-1208; March 17, 1937, date of issue.

Mr. Scherer. Yes. And that is the number which appears in your questionnaire. So that was correct, too.

You say in this questionnaire that you were working at the time.

Mr. Gojack. Yes, I was.

Mr. Scherer. It says that your duty was a field organizer or labor representative. You were such at that time, were you not?

Mr. Gojack. That is right, sir.

Mr. Scherer. It asks for your duties, and your duties at that time were, as you state, were they not: Organize and represent at collective bargaining, employees in radio and machine industry?

Mr. Gojack. Yes, sir.

Mr. Scherer. At that time you had been at that job for about 9 months, is that right? It states that you had been at that type of work for about 9 months.

Mr. Gojack. Yes, approximately.

Mr. Scherer. It also gives the history of your previous employment and the dates thereof. I assume that those are correct. It gives the name of your wife and children and their ages and addresses, and a lot of other information that you alone could furnish. Apparently all the information is correct, except your schooling, then, is that right?

Mr. Gojack. I would be happy to check it, Mr. Scherer.

(Document handed to the witness.)

Mr. Gojack. I might check it during a recess.

Mr. Tavenner. Will you recess for 5 minutes?

Mr. Moulder. The committee will stand in recess for 5 minutes.

(A short recess was taken.)

Mr. Moulder. The committee will be in order.

Mr. Tavenner. Are you ready to answer the question?

Mr. Gojack. Yes. I have examined this document, and the only error I can find in it in its entirety is the reference to having completed 8 years of elementary school and 4 years of high school.

I also see, upon examining it, a perfectly logical reason for whoever was responsible for the error.

Mr. Scherer, if you noticed, there were only 2 lines for occupation; and while, as I testified here yesterday, I had many occupations in the course of my life, the 2 listed were assembler—that was my factory experience—and research editor. That was my last WPA experience. Someone might have assumed that a research editor should at least have gone to high school. I just don't know what is responsible for it, but I would say, Mr. Scherer, that I believe if the FBI looked real carefully into your entire life, every document you signed, they probably would find a mistake or two somewhere along the line, and I think every human being could be found somewhere along the line to have signed the wrong statement or made some error.

[fol. 610] Mr. Scherer. All of us were pretty careful, though, in filling out our Selective Service questionnaire.

Mr. Moulder. Then it is your explanation that someone would naturally assume that most everyone is a graduate of high school in view of the experience and the position that you held?

Mr. Gojack. I suggest that as a possible reason for the error, but I just don't recall. I just don't recall.

Mr. Tavenner. Where did you attend elementary school?

Mr. Gojack. In the public schools and in the parochial schools of Dayton, Ohio.

Mr. Tavenner. What years did you attend public school in Dayton, Ohio?

Mr. Gojack. I attended a few weeks of the first grade at the Edison Public School. My mother had died a few years before that, and my father was finding it difficult to—

Mr. Tavenner. That isn't necessary.

Mr. Gojack. I am explaining why I went to this public school for only a few weeks.

Mr. Tavenner. That is not responsive to the question. What other years did you attend public school?

Mr. Gojack. Mr. Tavenner, I was going to save you some time by giving you my entire education in the course of my answer.

Mr. Tavenner. If you confined it to education, but you are going into the condition of your family, and so forth. Of course, I understand your purpose in doing it, but it is out of place.

Mr. Gojack. Sir, I went to Edison Public School for a few weeks, after which I went to school at the St. Joseph Orphanage for a number of years. I forget the exact year I left. I then went to Jefferson School in the fifth or sixth grade; Holy Name School first, a parochial school. Then when I went to live with a sister in another neighborhood, I transferred to the Jefferson School. I remember going to the Orville Wright School, I believe it was, one of the Wright schools in Dayton.

Then the seventh grade at Roosevelt Junior High, and a few weeks in the eighth grade. Then a few weeks more, or months, I don't recall the exact time, at the Boys Pre-vocational School in Dayton, Ohio.

Mr. Tavenner. That was the name of the school?

Mr. Gojack. It was a vocational school.

Mr. Tavenner. What was the last year of your attendance at elementary school?

Mr. Gojack. A few weeks in the eighth grade.

Mr. Tavenner. What year?

Mr. Gojack. What year was that? I would have to do some figuring; 1928, 1929, or 1930; 1929 or 1930 would be the better guess. I could figure it out for you if I sat down and did some studying.

Mr. Tavenner. I was asking you about Mr. Russell Nixon. Did he attend the executive board meetings that you said

you attended in March 1951 and in either December or January preceding?

Mr. Gojack. I don't recall, sir. I would like to explain that as legislative representative of our union, we invited Mr. Nixon upon occasion to address district council meetings. He never attended a district board meeting, but he might have attended a district council meeting. Whether or not he was there that year, I don't recall.

[fol. 611] Mr. Tavenner. I hand you a letter bearing date of March 27, 1951, on the stationery of United Electrical, Radio & Machine Workers of America, addressed to Mr. John T. Gojack, and over the signature of Russ Nixon. Will you examine it, please, and state whether or not you recall having received it?

(Document handed to witness.)

Mr. Gojack. Now that you show me this letter, I recall having received some such letter from Brother Nixon.

Mr. Tavenner. Will you read it into the record, please?

Mr. Gojack (reading).

Last week we received, addressed to the International Union, a letter from the Metal Workers Union officials in Paris, copy of translation of which is attached.

Although I have not had a chance to talk with anyone here in the international union about this, since this is a general communication and you indicated an interest in some such contacts at the last general executive board meeting, I am informally sending this to you for whatever consideration you think it might justify in your district.

Fraternally yours,

Russ Nixon.

Mr. Tavenner. You have previously told us that you had no interest whatever in the Metal Workers Trade Union of Paris and had no desire to make any contact with that organization. Will you explain that testimony in light of the statement by Mr. Nixon that you had at the very previous meeting of the executive board indicated such an interest?

Mr. Gojack. Yes, I will be glad to, sir. The interest I indicated at the January executive board meeting was not with reference to contacting the Metal Workers Union officials in Paris or any other specific organization. As I recall, some time prior to then we had discussed on a number of occasions the possibility of officers of our union—at one time I remember strongly advocating that the president of our union take a trip to Europe and that we see for ourselves what was happening over there in the trade-union movement, because we had been getting reports from other trade unionists, from people who were sent over there by the State Department, and I specifically remember posing the question that we ought to have some of our own officials go over to get firsthand reports on what was happening.

Mr. Tavenner. Is that the reason you were applying for a passport to go to Europe?

Mr. Gojack. No. As a matter of fact, I advocated in our general executive board that we establish contacts with unions with whom we had relations. I gave the examples that I recalled here, Wayne Pump and Burroughs Adding Machine, having plants. I remember as a result of my discussion in the general executive board meeting, for example, sir, that one of the other general vice presidents gave me the address of a union in England from which I could get some information on the Burroughs Adding Machine Co. there; some wage-rate information which we could use in our organizing efforts in the Detroit plant of Burroughs which was then and is today unorganized. I have been a strong advocate of this; and I remember also distinctly that in the course of one of these discussions at our general executive board meeting, having a clipping from either the Wall Street Journal or the New York Times from some official in General Motors or Ford, one of the bigger auto firms, suggesting that a way to ease the cold [fol. 612] war might be an exchange, a broad exchange of many people between here and Europe—

Mr. Tavenner. And you desired to make an exchange with the Metal Workers Union, a trade union, in Paris?

Mr. Gojack. Not specifically; no. Just the general question of international trade unions.

Mr. Tavenner. Mr. Nixon says it is a matter you were interested in and had inquired about, and he thought it important to send you a document from that organization. Doesn't that mean that you were interested in exchange with that very organization?

Mr. Gojack. No; it means nothing of the sort. As a matter of fact, he says in this letter that since this is a general communication—

Mr. Tavenner. A general communication from the Metal Workers Trade Union.

Mr. Gojack. Right. I indicated an interest in some such contacts, plural. I don't recall any inference here that I was seeking contact with the Metal Workers Union but, quite the opposite, contacts with any possible union, all possible unions.

Mr. Tavenner. It was a trade union which you knew to be a Communist outfit, didn't you?

Mr. Gojack. Which union?

Mr. Tavenner. The Metal Workers Trade Union.

Mr. Scherer. Of Paris.

Mr. Gojack. I don't know what it is today, to be very honest about it. I don't know what it is.

Mr. Tavenner. You read the document that Mr. Nixon sent you, didn't you?

Mr. Gojack. I believe I did, but I haven't the slightest recollection of what it was.

Mr. Tavenner. I am going to give it to you in a moment and ask you whether or not, in your judgment, it is a Communist document.

Mr. Gojack. I will be happy to read it, sir.

Mr. Tavenner. Will you examine the letter again and see whether or not the letter sent you was a copy made by Mr. Nixon in which your address is filled in in original type?

Mr. Gojack. Yes, sir.

Mr. Tavenner. What does that indicate to you?

Mr. Gojack. It indicates clearly to me that this communication was sent to a number of other people, also.

Mr. Tavenner. Do you know how many vice presidents of your organization received a copy of that letter?

Mr. Gojack. I haven't the slightest, sir. Very frequently, Brother Nixon sends information that comes across his desk in New York or here in Washington, to all of the district presidents. It has been a custom of his down through the years. We get detailed information from him that it isn't practical to send out to every local union. It is sent to the district offices.

Mr. Tavenner. Do you recall more definitely now about the subject of conversation in your executive board meeting that Mr. Nixon is referring to in that letter when you said you were interested in similar contacts?

Mr. Gojack. He uses the language "some such contacts." I testified here, and I will repeat, that I raised this question in many board meetings, and I would like to consider myself a champion of the cause for greater exchange be- [fol. 613] tween people throughout the world. I think it would help to bring about a little more stable peace if the common people of the various countries would get together a little more than they do.

We may learn something about them, and they may learn something about us.

Mr. Scherer. In view of these letters and the subsequent testimony, Witness, do you say that your contemplated trip to Europe, for which you were denied a passport, was still a pleasure trip, a vacation?

Mr. Gojack. Mr. Scherer, this communication was in March of 1951, and I would respectfully suggest that I—

Mr. Scherer. You can say it was not. You can say no.

Mr. Gojack. No, it has no connection. I will explain why. I can show you communications from all kinds of unions all over, in any given year that you want to. We don't keep a file of all of them. We keep a file of some of them.

To suggest the communication of March 27 has some relationship to my deciding in December or November that I wanted to take a vacation, and to imply something evil, I think is stretching the point.

Mr. Doyle. Was it not about this time that you were approaching the State Department? What months were you at the State Department?

Mr. Tavenner. 1952.

Mr. Doyle. 1952, a year later.

Mr. Moulder. Let's proceed and hurry along as expeditiously as possible.

Mr. Tavenner. I desire to offer Mr. Nixon's letter in evidence, and ask that it be marked "Gojack Exhibit No. 8," for identification purposes only, and to be made a part of the committee files.

Mr. Moulder. It is so ordered.

Mr. Tavenner. Attached to the letter which has been introduced in evidence is the following enclosure. In parentheses there appears at the top:

Following is translation of a letter received by UE International Office from French trade unionists in the metal manufacturing field:

PARIS, *March 12, 1951.*

DEAR BROTHER: I am sending you attached a copy of a letter sent on to the smelter workers which was sent by the Paris metalworkers to their American brothers.

I ask you to do all you can to make this letter known to the American metalworkers in order to rebuild the lines of international solidarity between the workers of our two countries.

You have, dear brother, our fraternal greetings,

H. JOURDAIN.

And here is the letter:

PARIS, February 9, 1951.

Paris Metal Workers to American Metal Workers.

Dear Brothers: Meeting in conference on February 3 and 4, 1951, the Paris metal workers send you their fraternal and friendly greetings.

They request that you be the bearer of their sentiments to all the metalworkers in New York.

At this time when the capitalists wish to push the people into a new war, the Parisian metalworkers address themselves to their American brothers and call upon them to lead together the struggle against the warmakers.

They have learned with pleasure that their American brothers in the electrical workers union are leading, like themselves, the same battle for peace and well-being.

[fol. 614] The Parisian metalworkers who have known on their own soil 3 wars in 75 years and the consequences which have resulted from these wars, the millions of dead, injured, widows and orphans, the piles of ruins which are not yet cleaned up, know well all the consequences which the policy of war threatens to their country.

The increase in taxes, high cost of living, depression, freezing of wages, increased speedup, poverty, are already for them (the Parisian metalworkers) the consequences of this policy.

The Parisian metalworkers know that like themselves, the American metalworkers are profoundly devoted to peace and do not confuse them with their capitalist government.

The Parisian metalworkers remember the tremendous sacrifices of the Soviet Union in the struggle against Hitlerism and are in agreement with the peaceful propositions formulated by her at Lake Success.

Conscious that the forces of peace are the strongest in the world, forces of which a part is the Soviet Union and

the popular democracies as well as the people of the capitalist countries and the colonial countries, the Parisian metalworkers know that the war is not inevitable, that one can and one must prevent it.

The millions of signatures received by the Stockholm appeal condemning atomic arms have shown everyone the strength which is represented by the people desiring peace.

American metalworkers, the millionaires that make of your country an immense arsenal, source of materials of war, of death, would make of you the accomplices of their crime and the associates of the Nazis whom you have fought with us.

The Parisian metalworkers struggle with all their strength against the preparations for war, against the war-makers, against the rearmament of Germany, for the ending of the war in Vietnam and the return of the expeditionary corps as you fight for the return to the United States of the American Army in Korea.

The Parisian metalworkers associate themselves with the grief and suffering of the American mothers whose children are dead in Korea, and will struggle with all their force in order that their country will not know the horrors which those valorous people now struggling for their independence know (in Korea). Plevin, provisional chief of the Government of France, in the course of his conversations with Truman, conspired behind our backs the stepping up of the preparations of war and the increasing of the policy of poverty which expresses itself already amongst us by the wage freeze.

No people threaten peace, it is why the Parisian metalworkers call you over the frontiers to make, with them and the other workers of the world, the call for peace.

General Eisenhower, whom the Parisian people have applauded in 1944 with the Allied armies having struggled against Hitlerism, has received, in 1951, in our capital an entirely different welcome. The people of Paris do not

want the rearmament of Germany nor an Atlantic army, nor a foreign commander in chief. It is why they have said to Eisenhower, "Go home and stay there."

In the other capitals of Europe the reception of the people was the same.

Brother American metalworkers, those of you who wish peace as we do from the depths of your heart, the security of your firesides, who do not wish to know on your land the horrors of war which we have known, let us establish amongst us the lines of brotherhood and comradeship—

"and comradeship" is stricken out—

let us exchange experiences, let us learn to know each other better, let us unite our efforts in order to put a stop to the policy of war and poverty of our respective governments.

Brother American metalworkers, the Paris metalworkers send you their fraternal trade-union greetings.

For the Conference.

The Secretariat of the Seine Metal Workers Union.

ANDRÉ LUNET,
Secrétaire Général.

And the names of eight other members of the union.

That is the document which Mr. Nixon transmitted to you and, as you say, no doubt to other vice presidents of your districts. Have you read any stronger propaganda document emanating from abroad than that, contrary to [fol. 615] and against the interests of this country and the foreign policy of this country?

Mr. Gojack. Have I read any stronger?

Mr. Tavenner. Yes. Do you know of any document emanating from abroad of a more propagandist nature than that document?

Mr. Gojack. The most accurate answer I can give to that is, of course, in the New York Times I read the debates of people in the United Nations, and I read stronger denunciations of our foreign policy than that in some of the speeches in the U. N.

Mr. Tavenner. Is there any doubt in your mind now, after having heard that letter read, as to the Communist character of the organization known as the Seine Metal Workers Union or the Metal Workers Union of Paris?

Mr. Gojack. Sir, I couldn't answer that question with a simple "Yes" or "No" answer, for the reason that, as I testified earlier, I don't know what the organization is. I don't know whether it is a Catholic union, a Communist union, or the so-called third force that they have there. There are things in there, for example, that Eisenhower got elected on. He got elected—at least he got the votes out our way based upon his strong stand against the Korean war.

Mr. Tavenner. Do you support the statement contained in that letter?

(Document handed to the witness.)

Mr. Gojack. Sir, I couldn't say that I support the statements in this letter, because there is general language in here, there are things in here like the reference to increase in taxes and the high cost of living and the freezing of wages—

Mr. Tavenner. What about the Stockholm peace appeal?¹

Mr. Gojack. I don't know anything about the Stockholm peace appeal, sir.

Mr. Tavenner. You never participated in that?

Mr. Gojack. I don't know anything about it. I know it has been condemned.

Mr. Tavenner. Did you engage in the movement to bring the troops back from Korea?

Mr. Gojack. Did I engage in the movement?

¹ Popular version of World Peace Appeal.

Mr. Tavenner. Yes. Did you advocate it?

Mr. Gojack. Oh, long before a lot of other people said that the Korean war was an error and that other things should have been done about it, I spoke out for peace and against useless killing. I believe strongly that that particular war, as it was settled ultimately by negotiations, should have been averted, if necessary by the same techniques.

I am against war. I am for peace. Is it a crime to be for peace in this country?

Mr. Scherer. That was not the question. Mr. Tavenner asked you whether you participated in any movements to bring the men back from Korea.

Mr. Gojack. I don't know about any specific movements designed for that given end. I spoke out at district conventions and at the national convention of our union strongly on the question of peace, strongly on the question not only of averting the Korean war—I remember asking Senator Homer Ferguson here last year, would he keep my boy out of the Indochina War. A lot of people felt that way.

[fol. 616] Mr. Scherer. Mr. Gojack, you are just quibbling now and evading. That was not the question.

Mr. Gojack. Mr. Scherer, I respectfully submit that the question of peace or war is not quibbling. It is not to me, particularly in the light of some of the recent revelations about what we can expect from the next war if, heaven forbid, we should have one. It is a serious matter. It is not a quibbling matter.

Mr. Scherer. Mr. Chairman, I ask that you direct the witness to answer Mr. Tavenner's question.

Mr. Gojack. I answered his question. I don't recall participating in any specific movement or organization designed or having as its name "Bring the Boys Back," or whatever it is. I have signed petitions. I have belonged to peace organizations. I have campaigned for peace. I have spoken to my Congressman for peace. I have written letters to the President. I have written letters to my Congressman. I wrote a letter to some of these fellows who

were in the real minority the other day when they voted on this question of avoiding war.

Mr. Scherer. The question of bringing the boys back from Korea has nothing to do with whether you are for peace or war. We are all for peace.

Mr. Gojack. My answer to the question is that I don't recall any specific thing, and I explained in my answer that I have done many things, many things, and you probably have a lot of information in your file where I spoke out on the question of peace and I participated in delegations. I was active.

Mr. Tavenner. What use did you make of this document when you received it?

Mr. Gojack. I am not sure whether it was with reference to that particular document or not, Mr. Tavenner, but I recall one time having a message, a document like that, either in the circular mail from Brother Nixon or somewhere, a greeting from some workers somewhere, and showing it to people and having requests from some members of the union that it be mimeographed and sent around to the locals. One local, I know, has a radio program, and they had a peace committee in this local, as a matter of fact.

Mr. Tavenner. How many locals do you think this was sent to?

Mr. Gojack. If this was sent in accordance with my customary practice, it was sent to all the locals in my district.

Mr. Tavenner. How many would that be?

Mr. Gojack. That would have been somewhere between, that year, between 22 and 25. I forgot the exact number at that particular time.

Mr. Tavenner. Representing a membership of approximately how many?

Mr. Gojack. The question of the membership of my union, the number, I declined to answer Mr. Doyle's question on that, and I respectfully decline to answer yours.

Mr. Tavenner. I am not asking the question as he asked it. This is back in 1951. The records can be ascertained, but it would be of help to the committee if you gave it to us.

Mr. Gojack. Some thousands of members, perhaps fifteen or twenty. I am not even certain that I circularized that one. I don't remember. I don't know. I remember distinctly having the request from one local, would it be possible to mimeograph one of these messages. Whether it was that one or another, I don't know.

[fol. 617] Mr. Tavenner. Apparently other similar documents were received from Mr. Nixon which were disseminated by the method you describe.

Mr. Gojack. Much information we receive from the Washington office is in turn circulated to the local unions of the district and to the members of our district executive board. It is a customary practice if we get something in the office that we think should be drawn to the attention of the local unions, that we either get sufficient copies from the original source or we duplicate it and sent it around. We don't do this with all the material.

Mr. Tavenner. I desire to offer the document in evidence, and ask that it be marked "Gojack Exhibit No. 9," for identification purposes only, and to be made a part of the committee files.

Mr. Moulder. It is so ordered.

Mr. Doyle. Do you do that, Mr. Gojack, as general vice president without awaiting action of the board? Do you have authority to do that detail administratively, to send a letter like this, a mimeographed copy, around to the locals?

Mr. Gojack. Yes, sir.

Mr. Tavenner. You have volunteered that you engaged in many meetings in what you have termed in behalf of peace. You are familiar with the Communist Party line, I suppose, with regard to the Stockholm peace appeal and various others that followed it, are you not? You are not?

Mr. Gojack. I am not even sure what you mean by the question.

Mr. Tavenner. Did you take an active part in the peace pilgrimage to Washington which was organized by one of

the "front" organizations known as the American Peace Crusade?

(The witness conferred with his counsel.)

Mr. Gojack. Sir, on this and all other questions that deal with my activity in any organizations, political or otherwise, what I think, how I feel, what I did about peace, whether I went on a specific delegation or not, and with whom—to all such questions I must respectfully decline to answer on the ground that the first amendment to the Constitution does not give the committee the right to pry into my beliefs.

Mr. Scherer. Mr. Chairman, I ask you to direct the witness to answer.

Mr. Moulder. Yes, Mr. Gojack, you are directed to answer the question.

Mr. Gojack. I respectfully decline to answer for the reasons stated.

Mr. Tavenner. I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. That is what I am interested in. My questioning of you is to determine what knowledge or information you had on the subject.

Mr. Moulder. May I say, Mr. Tavenner, in connection with your statement, that the so-called peace moves on the part of the Soviet Union were being instigated over here as propaganda so as to prevent any opposition to their aggression and domination of the free world.

Mr. Doyle. Mr. Chairman, may I add to those two fine statements that I am also interested in knowing what the [fol. 618] witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any con-

nection with. The question is the extent to which the Communist Party had infiltrated American labor unions, if you know anything about it, the extent to which they were using it then and are using it now for their conspiratorial purposes.

That is all, Mr. Counsel.

Mr. Tavenner. The documents which I handed you have dates which are very significant. The letter from Mr. Nixon was on March 27, which was after the so-called peace pilgrimage to Washington, which occurred on March 15; but the letter which he enclosed from the Communist-dominated outfit in Paris was dated February 16, 1951. Normally it would have been expected to have been disseminated before your peace pilgrimage here.

May I ask you whether or not that letter had any influence upon your action then or later?

Mr. Gojack. Which letter are you referring to?

Mr. Tavenner. The letter from Mr. Nixon.

Mr. Gojack. The letter from Mr. Nixon had no influence on any actions I took with regard to peace. I have acted on my own initiative on that question—letters to the editor at home, and delegations, and many activities.

Mr. Tavenner. If you have disseminated among all your unions, representing thousands of members, this propaganda document from Paris, then you were performing a substantial chore for the Communist Party, weren't you?

Mr. Gojack. Sir, I didn't testify that I circulated that. I testified that I remember vaguely that on one such communication from some trade union in Europe, which I showed around to people whom I met in my work, someone asked me if they could have extra copies of that. I remember mimeographing that. I am not at all certain—I didn't testify that it was this thing here, and it wouldn't have been circulated to thousands, sir. If it were a matter of something that came from our Washington office or our national office and didn't go directly to the locals, we sent it to about 25 local unions. Then the local unions them-

selves decided what to do with it, whether to file it, read it at a meeting, or throw it in a waste basket.

Mr. Doyle. May I interpolate here. You testified very definitely that it was your custom to send those.

Mr. Gojack. Not this. It was my custom to send whatever comes across our desk that would be of interest to our local unions, to relay it to them. Most of the material comes directly from our national union or appears in our press. Such documents as this, if any of those were duplicated, I can only recall the one, and I am not even sure it is that one there.

I had reference, Mr. Doyle, to information on the voting record of Congressmen, information on legislative matters, information on wages and hours and other union contracts; more strictly, trade-union information that we as a customary practice very frequently circulate to the local unions.

[fol. 619] Mr. Doyle. Of course, this concerned the international relationship between trade unions. Apparently you were very much interested in international peace, as we all are, thank God.

Mr. Scherer. For different reasons, Mr. Doyle.

Mr. Doyle. But not a peace without honor.

Mr. Moulder. Let us proceed, Mr. Tavenner.

Mr. Tavenner. Mr. Gojack, did it appear to you to be a very significant thing that Mr. Nixon should send you a document of the character which I read, and to call your attention virtually to the fact that you could use it "for whatever consideration you think it might justify in your district"—plainly indicating that it should be disseminated?

Mr. Gojack. No, sir.

Mr. Tavenner. That didn't raise any question in your mind?

Mr. Gojack. No, sir.

Mr. Tavenner. Was that because Mr. Nixon constantly sent documents of that kind to you?

Mr. Gojack. No. As a matter of fact, documents of that nature come from Mr. Nixon or Washington or national

office very infrequently. This would not be a usual and customary thing. He has sent us copies of, for example, the Economic Report to the President. That is one thing we get quarterly.

Mr. Tavenner. We are not talking about reports to the President. You know the type of documents that we are talking about. Did you report to your superiors or your executive board that such a document as this was received from Mr. Nixon?

Mr. Gojack. I don't recall, but I should explain that we may very well have read it to the board, I don't know. We read communications. If we read all the communications that we received in the course of 3 months, we wouldn't have time to do anything else for the 1 day we meet except read communications. I don't recall whether that particular one was read to the board.

Mr. Tavenner. The document refers in detail to action being taken by people in this country regarding the bringing of the soldiers back from Korea. Did you publicly advocate that that should be done?

Mr. Gojack. Sir, I publicly advocated that American boys should never have been in Korea.

Mr. Tavenner. I am talking about bringing them back from Korea during the progress of the war, in order to stop the war.

Mr. Gojack. I spoke out in many ways against the Korean war. I don't recall that specific formulation. I spoke out strongly on many occasions—incidentally, when it was quite unpopular to do so. Later on it became more fashionable, and people got elected on the basis of saying the same things I had said earlier. As a matter of fact, the Republican Party in Indiana posted signs on billboards throughout the State saying essentially the same things I said about the Korean war, only a little bit earlier. Maybe I was a premature peace advocate.

Mr. Tavenner. Wasn't the purpose of the peace pilgrimage to Washington to bring about a termination of the

Korean war through the bringing back of troops from Korea?

Mr. Gojack. I have no such understanding of that specific limited objective that you describe.

Mr. Tavenner. What was the objective?

[fol. 620] Mr. Gojack. My purpose for everything I engaged in in connection with peace was just that—to achieve peace.

Mr. Tavenner. You took part in the pilgrimage to Washington, didn't you?

Mr. Gojack. To that question, sir, I respectfully decline to answer on the grounds previously stated.

Mr. Tavenner. Weren't you in Washington at the time of the peace pilgrimage?

Mr. Gojack. I respectfully decline to answer that question on the grounds previously stated.

Mr. Scherer. Mr. Chairman, I request that you direct the witness to answer the question.

Mr. Moulder. The witness is directed to answer the question.

Mr. Tavenner. Were you a member of the American Peace Crusade organization?

Mr. Gojack. I respectfully decline to answer that question for the reasons previously stated.

Mr. Tavenner. On a number of occasions didn't you serve as chairman at meetings of that organization?

Mr. Gojack. I respectfully decline to answer for the reasons that you are asking me now about affiliations, beliefs.

Mr. Tavenner. I am not asking you about beliefs. I am asking you about actions on your part, and only actions.

Mr. Gojack. Am I to conclude that it is legal to be for peace, to speak for peace, but not to act for peace?

Mr. Tavenner. Of course, it is legal to be for peace and to act for peace, but I want to know the extent to which the Communist Party influenced any action that you entered into or counseled any action that you entered into.

Mr. Gojack. I just want to say this, if I may Mr. Moulder. I am answerable to my union membership. They tell me

what to do. Outside of that, I have a conscience of my own. I am motivated by the dictates of my conscience. On many, many questions regarding peace I did what I thought was best for this country because I felt deeply on the subject, and I do today.

Mr. Tavenner. Do you recall the Government of the United States had to take public action in order to counteract the interference with the foreign policy of this Government because of the moves emanating from the Soviet Union on what have been frequently termed phony peace proposals? Do you recall anything about that?

Mr. Gojack. Honestly, sir, I don't know what the Government has done with regard to the Soviet Union. My Congressman hasn't told me about those things.

Mr. Tavenner. On February 20, 1951, the very period which we are discussing, after it had become known that the peace pilgrimage to Washington would take place—because it was first planned for March 1, and then was delayed to March 15—the Secretary of State on that date, prior to the holding of this meeting here, made this statement:

In the latest manifestations of the Partisans of Peace, American Peace Crusade or Peace Pilgrimage, or whatever name it goes by at the time, the same people are calling for the same things, but this time they have added two more points. The first is that the Peace Crusade calls for the United Nations forces to withdraw from Korea. The Cominform has been calling for an immediate withdrawal from Korea, too. The Cominform wants us to withdraw from Korea because if we do withdraw, it will mean that we are not willing to resist aggression wherever it may break out. Voluntary withdrawal from Korea would be a clear indication to the forces of international communism that the [fol. 621] United States, as the leader of the forces of the United Nations, was abdicating its responsibilities, abandoning its allies, and renouncing the moral force which has made this country what it is.

I believe the situation which was brought about by propaganda emanating from abroad created a situation whereby the Secretary of State had to make that statement.

Are there any facts within your knowledge as to the efforts of the Communist Party to sponsor that type of peace propaganda among the members of your union?

Mr. Gojack. May I ask you whether or not this statement of Government policy you were reading was enunciated by Mr. Dean Acheson?

Mr. Tavenner. Yes, sir.

Mr. Moulder. That is not the question. His question was, Do you have any knowledge?

Mr. Gojack. No; I don't have.

Mr. Moulder. That answers that question.

Mr. Gojack. I would like to explain my answer. I thought I read all of Mr. Acheson's speeches, those which appeared in the Times. I don't recall having read anything or having seen this anywhere.

Mr. Moulder. Proceed with the next question, please.

Mr. Tavenner. Now I hand you the February 1, 1951, issue of the Daily Worker, at least a photostatic copy of it. It relates to the American Peace Crusade. It gives the names of those who were the initial sponsors of it. I will ask you to state whether or not there appears among the list of sponsors the name of John Gojack, international vice president, UERMWA, Fort Wayne, Ind.

(Document handed to the witness.)

Mr. Gojack. This document appears to be a photostat of the paper you described, with the notation that 65 notables—

Mr. Tavenner. Will you answer the question, please. Your statement is not responsive to my question.

Mr. Gojack. I am sorry.

Mr. Tavenner. The question is: Will you examine to see whether or not your name is listed as one of the original sponsors of that organization?

Mr. Gojack. On this paper you show me, this photostat, rather, my name is listed down there.

Mr. Tavenner. Does there not appear above your name the statement, "Other original sponsors include"?

Mr. Gojack. After a listing of Thomas Mann, the Nobel Prize winner, four protestant bishops and leading scientists, writers, Negro leaders, and trade unionists, the language appears which you read on the paper you handed me: "Other initial sponsors include."

Mr. Tavenner. Does your name appear among those included as original sponsors?

Mr. Gojack. Yes; on this document here, my name appears along with some A. F. of L. and CIO leaders, also.

Mr. Tavenner. Yes, I know. That is a voluntary statement by you. What I want to find out is, Who solicited you as one of the original sponsors?

Mr. Gojack. On that question, sir, I respectfully decline to answer on the grounds previously stated.

Mr. Tavenner. What method was used to get you as an original sponsor?

[fol. 622] Mr. Gojack. I respectfully decline to answer, sir, for the reasons previously stated.

Mr. Scherer. I ask that you direct the witness to answer the last question.

Mr. Moulder. The witness is directed to answer the question.

Can we not eliminate this request for direction to answer at the beginning by just assuming that every question asked of you, you are directed by the committee to answer? The committee, through the Chair, does direct the witness to answer the question.

Mr. Donner. Your statement about the assumption with respect to directions does not govern this hearing?

Mr. Moulder. That is correct.

Mr. Gojack. I respectfully decline to answer for the reasons stated, Mr. Chairman.

Mr. Tavenner. Have you been instrumental, Mr. Gojack, in the distribution of the March of Labor magazine among the membership of your union?

Mr. Gojack. Yes, we subscribe to it.

Mr. Tavenner. Do you know personally the owner, Mr. Steuben?

Mr. Gojack. No; I don't know him.

Mr. Tavenner. Do you know whether or not he is a member of the Communist Party, or was a charter member?

Mr. Gojack. I don't know the gentleman.

Mr. Tavenner. What type of magazine do you consider the March of Labor to be?

Mr. Gojack. It is a labor magazine that covers, as I know it to be from reading it, being one of a number of subscribers, that covers the broad labor field, CIO, A. F. of L., and independent union activities. They have had some special editions, for example, on 5 years of the Taft-Hartley law. There was another special edition on the workings of the McCarran-Walter Act. They had an article recently on the Square D strike in Detroit. They cover the strikes, one on the water-front. I read it for this reason: Our labor press, the UE News, covers only our own union's activities. I subscribe to the Auto Workers paper, the national CIO News, Labor, the railroad magazine; I get the machinists' paper, I get the IUE-CIO News.

Mr. Tavenner. You are getting rather far afield from the question.

Mr. Gojack. I am telling you that in all these papers you don't get the broad picture that you get in the March of Labor. That is all.

Mr. Tavenner. Have you read the report of the Committee on Un-American Activities on the March of Labor?

Mr. Gojack. No. You don't send us your reports. Evidently I am not on your mailing list.

Mr. Tavenner. I will give you a copy of it.

Mr. Gojack. I will be happy to get a copy of all your reports.

Mr. Tavenner. Apparently you do not agree with the American Federation of Labor's and the CIO's criticism of that paper as a paper which carries the Communist line.

Mr. Gojack. I wasn't aware that that had happened. I have read articles in there written by A. F. of L. and CIO people.

[fol. 623] Mr. Tavenner. I notice a letter which was published in the November 1950 issue of the March of Labor as follows:

DEAR BROTHER STEUBEN: March of Labor is doing a bangup job and should be pushed by everyone who recognizes the need for an alert, militant, and united labor movement.

Fraternally yours,

JOHN T. GOJACK,
UE District President

Did you write that letter?

Mr. Gojack. Yes. Shucks, Mr. Tavenner, I even wrote an article for the March of Labor on the Whirlpool raid, this very shop that is having the election tomorrow and on which this committee hearing has influenced the outcome and has interfered in. There is an article in March of Labor on the previous raid we had in the Whirlpool plant. I am not much of a writer, but it told the story of that raiding election I thought pretty completely.

Mr. Moulder. You have made several comments on it. I do not want to prolong this hearing any longer than necessary, but I want to make it crystal clear again that this committee in no way whatsoever are intentionally interfering with any election. We had no knowledge of it at the time the hearings were set.

Furthermore, I want to make the statement that if it does have some effect upon the outcome of the election, then in accordance with your statement that the people who belong to your union are people of good judgment and want to exercise their rights and express their opinions in their elections, they can do so and, if it does affect you adversely, then there must be some good, sound, justifiable reason for its so affecting you.

Mr. Gojack. Sir, because of the timing of this hearing just 2 days before the Whirlpool election, which takes place tomorrow, the press distortions on what happened here, some of which I related when I first came on the stand this morning—

Mr. Scherer. You said "press distortions." In what way has the press distorted anything you said at this hearing?

Mr. Gojack. I refer to press distortions on testimony yesterday.

Mr. Scherer. I would like to know in what way they distorted your testimony.

Mr. Gojack. They distorted the manner in which people conducted themselves here. The radio in my hometown, to the detriment of my family, has distorted something that you people here kept repeating yesterday, I thought quite unnecessarily. I commented on that this morning. I don't want to go into it again.

The very fact that the hearing is scheduled for 2 days before the election, at a time when we will not be able even to show our members the actual record of what was said here.

Another press distortion was in failing to report what I actually testified here to yesterday afternoon. The press in Fort Wayne and in St. Joseph, Mich., where we have these elections coming up, deliberately distorted their accounts of this hearing by omitting important testimony I gave, purely for the—

Mr. Scherer. I have not seen those accounts, but I do not believe that the press distorted the hearings yesterday, particularly if they had an account of your conduct on the stand. I do not think they could have written strongly enough to give the public a true impression of how you acted yesterday.

[fol. 624] Mr. Gojack. Mr. Scherer, I am going to have to answer that. That calls for an answer. The very reason you staged these hearings, the whole timing and the staging is to give you an opportunity to interfere in labor unions,

to bust unions. The very fact that George McClaren, the industrial-relations director, knew 3 days before anybody else that there would be a committee hearing. Who arranged it with him? How was he able to announce it?

Let me say this: I wired the chairman of this committee, as did other people, asking for a continuance of the date of this because of the timing of it for the Whirlpool election. I remember also that while the chairman of the committee reported to the press that he postponed the hearing initially because of the Magnavox election, the truth is that the clerk of this committee, Mr. Beale, sent a telegram to my counsel in New York saying that the original hearing in Fort Wayne could not be postponed, and later that night he reported to the press in Fort Wayne that it was indefinitely postponed.

Then subsequently, when word got up to Whirlpool that the hearing might be held beyond the Whirlpool election, something happened, and then the hearing was set for the 28th, 2 days before the Whirlpool election.

Mr. Moulder. This committee, as you will admit and everybody knows, has no jurisdiction or authority to bust unions. Let us proceed with the questioning and interrogation of the witness.

Mr. Tavenner. In the light of all this talk and the speeches made by the witness, may I make a brief statement for the record?

Mr. Moulder. Yes, Mr. Tavenner.

Mr. Tavenner. It is true that a telegram was sent to counsel for Mr. Gojack, as we understood it at that time, Mr. David Scribner, stating that the hearings would not be postponed. Mr. Scribner called me and explained the reasons for his desire to postpone it, some of them personal reasons. The matter was taken up again with the chairman, and the chairman changed his opinion about it and he was wired accordingly, as a result of that.

The committee had no knowledge whatever of the Whirlpool situation which you have described, and the hearings

were set without any regard to it at all and without any knowledge of it.

May I ask the witness a question? When was this election at Whirlpool announced?

Mr. Gojack. It had to be held 30 days before, about February 5, 6, or 7, somewhere along there.

Mr. Tavenner. Please answer my question. When was it made public?

Mr. Gojack. I don't know the exact date. The election was ordered before your hearing was announced for Fort Wayne.

Mr. Tavenner. Wasn't it made public on last Thursday for the first time?

Mr. Gojack. No, it was set before that.

Mr. Tavenner. You are under oath. Do you state that to your definite knowledge, that it was before that?

Mr. Gojack. Yes. I wired Chairman Walter last Thursday night telling him that the 28th date was interfering with the Whirlpool election and the local union—

Mr. Tavenner. That is the first knowledge this committee had of it, I think. Isn't that the very date on which the election was set at Whirlpool? Isn't that the very date on [fol. 625] which it was announced that it was set?

Mr. Gojack. I am sorry, sir, the election at Whirlpool was set before that.

Mr. Tavenner. Was it publicly announced?

Mr. Gojack. It was known. It was broadcast in the newspapers.

Mr. Scherer. I have telegrams, Mr. Chairman, from various people in the Fort Wayne area saying nothing about the Whirlpool election. They ask for postponement of the Magnavox election. They got that postponement, and now they are complaining about it.

Mr. Tavenner. I may say that Mr. Scribner, in calling me, had nothing whatever to say about any election at Whirlpool.

Mr. Moulder. Mr. Tavenner, at the beginning of the hearings, counsel for John Thomas Gojack, Julia Jacobs,

and Lawrence Cover, filed a statement of objections to hearings and a motion to vacate the subpoenas. At that time the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, *nunc pro tunc*, the objections and motion to vacate subpoenas are overruled.

Mr. Donner. May the motion be incorporated in the record, sir?

Mr. Moulder. It is filed. It will be marked "Filed."

Mr. Tavenner. Mr. Gojack, were you a sponsor of a Bill of Rights conference held at the Henry Hudson Hotel in New York, July 16 and 17, 1949?

Mr. Gojack. I respectfully decline to answer that on the grounds that this committee has no authority to inquire into my political beliefs.

Mr. Tavenner. I am not asking any question about your political beliefs. Will you answer the question?

Mr. Gojack. As I said earlier, I respectfully decline to answer, because I think the first amendment to the Constitution gives me the right to have ideas and believe in the Bill of Rights which is involved in this, without any committee of Congress restricting my right to champion the enforcement of the Bill of Rights. I think the very hearing violates that.

Mr. Doyle. May I state to the witness, you know full well that this committee has never and does not now intend to restrict anyone's right to apply the Bill of Rights; but yesterday, Mr. Gojack, you very proudly volunteered the statement that you had worked for civil rights. You emphasized that yourself. You remember that.

Mr. Gojack. Absolutely.

Mr. Doyle. That comes under the Bill of Rights does it; not? Why don't you cooperate with us and tell us the extent and the methods you used to apply your interest in the Bill of Rights. You volunteered yesterday that you had been a fighter for the Bill of Rights. Now prove it. Help us to understand.

Mr. Gojack. Sir, I think I am fighting for the Bill of Rights by taking the position I am taking here: That this legislative committee of Congress, this investigating committee, set up for legislative purposes, has no right to be a court, jury, and prosecutor.

Mr. Doyle. No, we do not try to do that. We are trying to get your cooperation as one of the labor leaders of our country, to give us facts which will help us more intelligently to legislate with reference to the extent to which the Communist conspiracy has entered your union and either controlled it or tried to control it. That is our official [fol. 626] assignment, and that is what we are trying to do. You cannot sidetrack us or cover up our determination to get the facts, by bringing in these extraneous matters.

Mr. Gojack. Sir, I don't feel that they are extraneous. I sincerely believe and I feel deeply that if you can question me about what I have done in some organization regarding the Bill of Rights, then you can question and challenge and castigate, say, a Supreme Court member for whatever position he may take on the Bill of Rights. I think the entire matter violates the first amendment. I am objecting on those grounds, sir.

Mr. Doyle. Mr. Chairman, I just want to remind the witness again that under Public Law 601, with which you are perfectly familiar—you made that very apparent yesterday—our official assignment is to go into the area of subversive propaganda and activities wherever it originates, whether it originates domestically or from foreign countries. That is what we are doing, and you know it full well. That is under Public Law 601 which was passed in the 79th Congress.

Mr. Moulder. Mr. Tavenner, it is 5 o'clock. Do you think you ought to proceed further this evening?

(Discussion off the record.)

Mr. Moulder. The committee will stand in recess for five minutes.

"A short recess was had."

Mr. Moulder. The committee will be in order.

Proceed with the interrogation of the witness, Mr. Counsel.

Mr. Tavenner. Mr. Gojack, endeavoring to accommodate all persons involved here to make the rest of the interrogation as short as possible, you have indicated in response to prior questions that have been asked you that you would not testify regarding certain organizations of which you were supposed to have been a member.

The committee has information indicating that you have been affiliated with the following organizations. I am going to ask you, if there are any of these that we are wrong on:

American Youth for a Free World
 National Negro Labor Council
 Civil Rights Congress
 American Committee for Protection of Foreign Born
 Committee to Win Amnesty for the Smith Act Victims
 National Committee to Secure Justice in the Rosenberg Case
 American Peace Crusade

That is all that I have listed. Is there any one of the organizations that I have mentioned that you are not a member of?

Mr. Gojack. To that question, sir, I respectfully decline to answer for the reasons previously stated.

Mr. Tavenner. My purpose in asking you as to your membership in these organizations is not merely to find whether or not you were identified with those organizations, because the committee by its investigation has certain facts regarding that, but the committee does desire to inquire as to what Communist Party method have been used and what Communist Party assistance has been given in the operation of any of these groups.

You have indicated before that you would not answer any questions of that character. If that is your idea now, I will not waste time in asking you about each of these individual organizations.

Mr. Gojack. Yes, sir, that is my stand.

[fol. 627] Mr. Tavenner. You take the same position?

Mr. Gojack. Absolutely, sir.

Mr. Tavenner. Then it would be a mere waste of time on the part of everyone to ask you those questions if you now tell us you would not answer them.

Mr. Gojack. I agree with you, sir.

Mr. Doyle. Mr. Chairman, I move that the chairman instruct the witness to answer the question.

Mr. Moulder. The witness is directed to answer the question concerning each of the organizations, both questions propounded by Mr. Tavenner.

Mr. Gojack. I respectfully decline to answer, sir, for the reasons previously stated.

Mr. Tavenner. Did you have any official position in the Rosenberg Defense Committee in the State of Indiana? I want to ask you that question.

Mr. Gojack. I respectfully decline to answer that, sir, for the reasons stated.

Mr. Tavenner. I asked you earlier in your testimony about Arthur Garfield, who was an official in your union and who signed the affidavit which you presented on the filing of your dependency claim with the Army. Was he known to you to be a member of the Communist Party?

Mr. Gojack. I respectfully decline to answer, sir, on the grounds previously stated, and for the additional reason that I don't want at any time in this country to be placed in the position of being an informer. I agree with the Baltimore Sun that that is an odious profession, and I don't want to become a party to that discredited profession.

Mr. Tavenner. Mr. Chairman, may I request that the witness be directed to answer that question.

Mr. Moulder. The chair directs the witness to answer the question.

Mr. Gojack. I respectfully decline to answer for the reasons stated. I don't believe that this committee has a right under the first amendment of the Constitution to inquire into my beliefs or affiliations, about persons I know, and for the additional reason that as a trade unionist I

resent even to be asked to be an informer, because I agree with the quote I gave you earlier from the Baltimore Sun that the Matusow case reminds us that the stool pigeons are as a class to be despised and not to be trusted. I don't want to become a stool pigeon and an informer.

Mr. Moulder. Any further questions of this witness?

Mr. Tavenner. One further question.

Mr. Gojack, are you now a member of the Communist Party?

Mr. Gojack. Sir, that question was asked me yesterday. I replied to that question yesterday by repeating under oath my answer to that question as contained in my non-Communist affidavit, which is currently on file.

Mr. Moulder. The chair directs the witness to answer the question.

Mr. Gojack. I stand on my previous answer, which is in the record.

Mr. Tavenner. I have no further question, Mr. Chairman.

Mr. Moulder. The witness is excused. The committee will remain in session.

(Witness was excused.)

[fol. 628] Mr. Scherer. Mr. Chairman, I move that this subcommittee recommend to the full Committee on Un-American Activities that the witness John Gojack be cited for contempt.

Mr. Doyle. Mr. Chairman, I second the motion.

Mr. Tavenner. And that the facts be presented to the committee.

Mr. Scherer. Yes, and that the facts be presented to the committee and subsequently to the Congress.

Mr. Moulder. It has been moved and seconded that the subcommittee recommend to the full Committee on Un-American Activities that John Gojack be cited for contempt of Congress, and that the facts be presented to the full committee.

Mr. Scherer. I call for the vote.

Mr. Moulder. A roll call vote has been requested of the subcommittee on the motion. Those who are in favor will answer by saying "aye"; those opposed, "no."

Mr. Doyle?

Mr. Doyle. Aye.

Mr. Moulder. Mr. Scherer?

Mr. Scherer. Aye.

Mr. Moulder. I as chairman vote "aye." Therefore, the subcommittee, having unanimously voted to cite the witness John Gojack, do recommend to the full Committee on Un-American Activities that John Gojack be cited for contempt of Congress. The facts and the report will be presented to the full committee as provided by the rules of the House.

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[fol. 629]

COMMUNIST ACTIVITIES IN THE FORT WAYNE, IND., AREA

Monday, April 25, 1955

HOUSE OF REPRESENTATIVES,

SUBCOMMITTEE OF THE COMMITTEE

ON UN-AMERICAN ACTIVITIES,

Washington, D. C.

Public Hearing

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:15 a. m., in the caucus room, 362, of the House Office Building, Hon. Clyde Doyle (chairman of the subcommittee) presiding.

Committee members present: Representatives Doyle (presiding), Frazier, and Scherer.

Staff members present: Frank S. Tavenner, Jr., counsel; and Donald T. Appell, investigator.

Mr. Doyle. The subcommittee will be in order.

Let the record show that the Hon. Francis E. Walter, chairman of the Committee on Un-American Activities, Committee of the House, pursuant to the provisions of Public Law 601, the law establishing the subcommittee, duly appointed James B. Frazier, Jr., of Tennessee, Gordon H. Scherer, of Ohio, and myself, Clyde Doyle, as subcommittee chairman, to conduct this hearing.

This is a continuation of the hearing of February 28, 1955, which had for its purpose consideration of testimony relating to Communist Party activities within the field of labor, the method used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

We expected to hear the testimony of one David Mates, whose appearance before the committee had twice been postponed at his request, on February 28, but the United States marshal was not then successful in effecting service of the subpoena.

It is understood that Mr. Mates has now been served and is now personally present. An additional purpose of this hearing today is to continue the committee's inquiry into the circumstances under which members of the Communist Party in the United States were recruited for military service in the Spanish Civil War, and to ascertain the method used by the Communist Party in securing assistance from the medical profession in carrying out its objectives.

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[fol. 630]

TESTIMONY OF DAVID MATES, ACCOMPANIED BY HIS COUNSEL,
BASIL R. POLLITT

Mr. Tavenner. What is your name, please, sir?

Mr. Mates. David Mates, M-a-t-e-s.

Mr. Tavenner. It is noted that you are accompanied by counsel. Would counsel please identify himself for the record?

Mr. Pollitt. David Scribner and Basil R. Pollitt, 11 East 55th Street, New York 22, N. Y.

Mr. Tavenner. When and where were you born, Mr. Mates?

Mr. Mates. I was born in Vilna, Lithuania, April 13, 1907.

Mr. Tavenner. When did you come to this country?

Mr. Mates. I was brought here at the age of 5.

Mr. Tavenner. Are you a naturalized American citizen?

Mr. Mates. I am a citizen by virtue of derivative citizenship, and my father having become a citizen shortly after his arrival in this country.

Mr. Tavenner. What was the date on which your father was naturalized, and where?

Mr. Mates. He was naturalized in the city of New York, Federal district court, in 1918, I believe.

Mr. Tavenner. Under what name was he naturalized?

Mr. Mates. Under the name of Metropolitan.

Mr. Tavenner. What was his first name?

Mr. Mates. Morris.

Mr. Tavenner. Then your name would have been Metropolitan unless you have changed it by law. Have you done so?

Mr. Mates. I have changed my name, I consider lawfully, and I have used the name for some 30 years, and married under that name, bore children under that name, and voted under that name.

Mr. Tavenner. So you are generally known as David Mates?

Mr. Mates. That is correct.

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[fol. 631] Mr. Tavenner. Will you give the committee, please, your record of employment from 1930 up to the employment that you just mentioned?

Mr. Mates. That is quite a job, and I don't see how that relates to any legislative purpose, to go back some 25 or 30 years and remember all of the jobs that I had, or didn't

have, and all of the periods of depression and unemployment.

Mr. Tavenner. What was your employment in 1930?

Mr. Mates. I feel that the question is not a proper one and I will claim the privilege of the fifth amendment not to be a witness against myself.

Mr. Scherer. I ask that you direct the witness to answer the question of counsel as to his employment in 1930.

Mr. Doyle. Yes, I think it goes to the point of identification of the witness, and I instruct the witness to answer the question.

(Witness conferred with counsel.)

Mr. Mates. Mr. Chairman, I feel that the answer is one that has no legislative purpose, and it is simply a violation of every basic right of the first amendment, and it is prying into the private life, and it has nothing to do with my activities in the UE, which in the sense of being discussed in this hearing, and on the basis of that I vote the right under the first amendment and the available right under the fifth not to be a witness against myself, and therefore, I decline to answer the question.

Mr. Doyle. I instruct the witness again to answer, and in doing so, of course, the committee recognizes the right of a witness when he conscientiously believes to invoke his constitutional privilege.

But again, I wish to say, Mr. Mates, that we feel as a committee that we always have the right to go into the question of identification of a witness, who he is, and where he has been, and what he has been doing.

That, of course, goes in part to the question of the extent of the activities of the Communist Party, possibly in different fields of endeavor. What you were doing in 1930, and what work you were engaged in goes to the point of identification among other things, of your own activities during that period of time.

Mr. Mates. Well, Mr. Chairman, I know that this committee, because the chairman of this very committee has

made a public statement on the floor of Congress that he is out to destroy my union, an act or statement which I think is completely lawless and has no basis in law, in fact, in Public Act 601, and if there are any powers granted to this committee to break unions, I would like to be informed of that right.

In view of the fact that members of this committee, and I have black and white statements, said that when they have a witness before them they can always go to the woodshed and get a big stick and get a man on perjury or contempt or both, I don't see why I should waive my constitutional rights and not use the fifth amendment, which is granted to protect people against testifying against themselves.

Mr. Doyle. May I say to the witness that whatever statements you refer to as having read or heard being made by members of this committee, were not made by any member of the subcommittee that is here this morning. We are a subcommittee of a committee of Congress, and I can say very truthfully that I, as a member of this committee, and I am sure none of the members of this subcommittee, are out to break any union; we are to break up, though, if we can, any Communist Party controls or efforts to control either your union or any other union. That is in line with our legislative assignment. That is, to find the activities or the extent of the activities of the Communist Party at any level of American life, whether it happens to be in the union of which you are international representative, or any other union. I wish you, sir, as one of the foremost leaders of American organized labor to get that distinction. I sort of feel that you have the distinction in mind, even though you made the statement that you did.

This committee is not out to break any union. It never has been. We are out to find the extent to which subversive activities are present in any union, or in any level of American life.

Proceed Mr. Tavenner.

Mr. Tavenner. How were you employed in 1936?

Mr. Mates. For the same reason already stated, I decline to answer the question.

Mr. Scherer. I ask that you direct the witness to answer the question as to the nature of his employment in 1936.

Mr. Doyle. For the same reasons, I instruct the witness to answer the question.

Mr. Mates. As I indicated, while the Chair indicates this subcommittee has no intention of breaking my union or any other union, this committee did in fact act as a strike-breaker for the Square D management in 1954, which is the basis of this hearing, and I came to testify about the Square D strike and the extent of subversives, if any, and there was direct participation by this committee in the face of a strike supported by the entire labor movement of Detroit, including the UAW, and AFL, and everybody, and Kit Clardy, the defeated Member of Congress from this district, insisted it was a Communist-led strike, and a push-button strike, and you say you are not out to break unions.

For these reasons, I still invoke my right and privilege under the fifth amendment not to answer the question.

[fol. 633] Mr. Doyle. Of course, Mr. Mates, again it is my duty to simply state that this committee is never out to break a union, but we are out to break the Communist control of a union, or the ambition of the Communist Party to get control of a union. Now that you have made your talk on that point, let us proceed, Mr. Tavenner.

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[fol. 634] Mr. Tavenner. How long have you known Dr. Eugene Shafarman?

Mr. Mates. About 4 years.

Mr. Tavenner. Had you consulted him professionally before December 3, 1954?

Mr. Mates. Yes. I consulted him in 1951, and I had some disability.

Mr. Tavenner. Had you known him prior to 1951?

Mr. Mates. I really don't know. I didn't know him. I had no occasion to be under his care. I have known of him, and I don't know if I ever had occasion to meet him before that time, the 1951 date.

Mr. Tavenner. Had you ever met him before?

Mr. Mates. I don't recall having met him before.

Mr. Tavenner. At the time you consulted the doctor, were you aware that at one time he had engaged in giving medical examinations to persons recruited by the Communist Party for military service in Spain?

(Witness consulted with counsel.)

Mr. Mates. I wouldn't know of my own knowledge. I was not in Detroit during that period, and I wouldn't know it as a fact.

[fol. 635] Mr. Tavenner. Mr. Mates, you have refused to answer any questions that I have asked you regarding your participation in the civil war in Spain. But I desire to confront you with an item taken from the January 27, 1949, issue of the Daily Worker, in which you are quoted by Mr. William Allan, as having declared that on about January 26, 1949, in this article, that you had fought in Spain.

I desire to explain the article to you a little more fully. This is an article entitled, "Detroit Unionists Assail Split in World Labor," and it begins with this statement:

Labor leaders here denounced the withdrawal of the CIO from the World Federation of Trade Unions. They urged CIO President Philip Murray to reverse the action taken by CIO Secretary-Treasury James B. Carey.

And then it quotes what various labor leaders have to say, including you. This is the paragraph relating to you:

David Mates, CIO industrial union organizer declared, "As one who fought in Spain and saw what divided labor ranks mean in Europe, I say pour the protests into the CIO so that Carey and Murray will not get away with this."

Were you correctly quoted by Mr. William Allan in that article?

Mr. Mates. I claim the privilege of the fifth amendment not to answer the question.

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[fol. 636] Mr. Doyle. Just before we adjourn for luncheon, Mr. Mates, let me see if I understand the situation as far as you are concerned. I am not assuming anything, and I am just reading the record.

[fol. 637] I think that you testified that you started to commence using the name of David Mates about 30 years ago, in 1925. That is correct, is it not?

Mr. Mates. I testified to that extent; yes, sir.

Mr. Doyle. And that you investigated and found under the Illinois law that was O. K., and you didn't have to go into court and change your name.

This copy of a passport under the name of David Metropolitan, which was handed you by our distinguished counsel has a picture on it which seems to resemble you quite a lot, although you didn't identify it as your picture. I would identify it as your picture, to be frank with you.

This copy shows that you were born in Russia, April 13, 1907. It shows that your father was born in Russia, too. It shows that at the time of these passport documents, dated when the passport was issued, March 18, 1937, many years after 1925, you used the name of David Metropolitan. You did not tell the State Department that you had ever claimed to have legally taken the name of David Mates. There is no reference to David Mates. He does not exist as far as this passport application or records are concerned.

That is even though in 1925 you claim that you changed your name and commonly used that name.

Many years later you did not tell the State Department that, and then again on the other passport paper, you again used the name of David Metropolitan and showed you were born in Russia, and your father was born in Russia and showed you were living at the Hotel Minerva, in Paris, in connection with your business to France, England, and Spain.

It showed the address of your father-in-law, now deceased. Again you never used the name David Mates. Why didn't you? Why didn't you tell your own Government, your State Department, that you were known under the name of David Mates?

(Witness consulted counsel.)

Mr. Doyle. What had you to hide or to conceal?

Mr. Mates. Mr. Doyle, the answer to your question, I have testified here as to the facts, and I invoke my right under the fifth amendment not to testify against myself. These things speak for themselves.

Mr. Doyle. But these two passport documents, as I take it, are deliberately in contravention of your own sworn testimony.

But my impression is that these written documents signed by you and with your picture on them, are in contravention of your own sworn testimony, and if you have an honest explanation this may be a situation where you should give it.

Mr. Mates. Mr. Doyle, I don't think that the testimony will show that I testified that I had never used the name before in my life, before, since or after. I simply told Mr. Tavenner when he asked me, what my name was, and I gave it to him, and he said did I have a prior name, and I said, "Yes," and that appears in my selective-service application and everywhere else, and then he didn't ask me did I ever cease using any other name, and now you make a big to-do that at a certain point somebody, or I, or it wasn't testified to, used the name again.

I never testified that I had never used my family name. I never did, and the testimony won't show it in the record.

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[fol. 638] Mr. Tavenner. Mr. Mates, we were talking about the Trade Union Unity League going out of existence in 1935. You refused to comment on the reason for it, which I asserted as being that it was unsuccessful in selling the

Communist Party line under the Communist label to the rank and file members of labor unions.

Now, I want to ask you this question: Isn't it true that since that organization went out of existence around 1935, that the Communist Party has still endeavored to accomplish the same objectives by the method, however, of infiltrating the leadership of labor unions?

(Witness consulted counsel.)

Mr. Mates. I will have to claim the privilege and I am not in a position to answer what the great strategy was, and of my own knowledge I can't answer your question, and I will have to claim the privilege of the fifth to testify in regard to the whole thing.

Mr. Tavenner. You say of your own knowledge, you can't answer. Well now, you have been an important labor leader since 1943, according to your testimony, in United Electrical, Radio, and Machine Workers of America.

During that period of time, have you observed any effort on the part of the Communist Party to infiltrate the leadership in your union?

(Witness consulted counsel.)

Mr. Mates. I have been a member, as I indicated, of the AFL and of the CIO, and of the electrical workers, and I know that as far as you are talking about, your question was formulated around 12 years of membership in the UE, and all I can tell you is that the United Electrical Radio and Machine Workers is a legitimate labor organization, under the meaning of the Federal statute, and run by its membership and they do legitimate trade union problems, just as in the Square D strike, there was no pushbutton strike from Moscow, or New York, but it was people who struck for a living wage, for their contract, and if that is subversive in your mind, and that makes it infiltration, and it makes it the Communist conspiracy, it is just too unfortunate.

Mr. Scherer. I submit the witness has not answered the question.

Mr. Mates. What is the question? I didn't get it.

Mr. Scherer. Apparently not. Will you read the question?

Mr. Doyle. Before that question is read, may I make it clear, Mr. Mates, we know that you feel you are under an obligation to make a record here that you can show the union and others.

But this committee does not hold or believe either directly or indirectly that legitimate labor-union striking is subversive.

Mr. Mates. Your members have stated it publicly in the press time and time again, and the whole country took it up.

Mr. Doyle. That is a misstatement. No voluntary statement by a committee member is the voice of all the committee members when the statement has been authorized to be made.

[fol. 639] Proceed, Mr. Reporter, but I want the record to show that you are making a wrong statement, and the committee doesn't believe anything of the kind.

(Question read by reporter.)

Mr. Doyle. If any member of the committee makes a statement like that, he makes it without the express authority of the committee.

Mr. Mates. The chairman of the committee has some powers, and he has made statements like that time and time again.

Mr. Scherer. He did not make that kind of a statement. I am very familiar with the statement made by the chairman of the committee.

Mr. Mates. He went beyond strikebreaking, he is out to destroy this union entirely, and what law gives him that authority? Does Public Law 601 give him that authority? What law does he base that on?

Mr. Scherer. He is out to destroy the Communist Party. As the chairman of the subcommittee he said he is out to destroy, as we all are if we can, the Communist influence and domination of any activity in American life.

Mr. Mates. Mr. Scherer, that is not the statement Mr. Walter made in the Congressional Record. He is out to destroy UE, period.

Mr. Doyle. It may be that the chairman feels that the UE, or some union to which he referred, whatever it was, is presently dominated by the Communist Party in America. That may be the fact, Mr. Mates. If it is, the UE owes it to its members and the people of the United States to clean house.

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[fol. 640] Mr. Doyle. Mr. Mates, I know that for myself, personally, I want to just make this brief observation to you. As a result of my several years of sitting on this committee I have come to feel that any man that claims to be a patriotic American citizen, whether he is a labor leader or not, who joins the Communist Party in the United States or who stays in the Communist Party in the United States approximately after May of 1945, when Earl Browder was deposed as leader of the American Communist Party, does so with his eyes open. The Duclos letter which came to this country and was presented to the American Communist Party convention in April and May of 1945, clearly showed by its text and intent, the intention of the international Communist conspiracy to use force and violence when necessary in their judgment to overthrow constitutional government in the United States.

So my own thought is that if you or any other labor leader stays in the American Communist Party now or have stayed in it since a reasonable time after Earl Browder was deposed, you have stayed in it with your eyes open [fol. 641] to the fact that the international Communist conspiracy, including the American Communist Party, is dedicated to the proposition that when they find it convenient, if ever, they have no hesitancy in overthrowing by force and violence our own form of constitutional government, the same as the statement read by Mr. Tavenner from that Trade Union Unity League, in which they state to that effect.

So I want to say to you, we certainly commend any man who conscientiously pleads the fifth amendment when he can do it in truth and honesty and in good faith and conscience.

That is the right of every American citizen. We uphold and defend it.

Personally, I make no conclusions when an American citizen pleads the first and fifth amendments, and I don't conclude the man is guilty of anything, if he does it in good faith and conscience, because that is our constitutional right and protection. It is not to be used lightly nor dishonestly.

Of course, I also know that it is still the Communist Party line in the United States to plead the fifth amendment, even though it is in violation of good faith and conscience.

Can I ask you a couple of questions about this passport data, because you were born in Russia according to your statement. Your father was born in Russia. We know that, as a matter of record, Russia is still in control of the Communist Party conspiracy and according to the Bandung hearings in Indonesia in the last several days, some of the free countries of Asia are still afraid of the Communist conspiracy taking them over as colonies for the international Communist conspiracy.

May I ask you this: Were you a member of the Communist Party in any way in Russia before you came to this country? You were only a youngster, but had you in any way become identified through your parents, or in any way with the Communist Party in Russia before you came here?

Mr. Mates. I testified that I came here about the age of 5 or so.

Mr. Doyle. Well, were you in the Communist Party kindergarten or children's school of any kind? They had them over there then.

Mr. Mates. That was long before I. It was during the reign of the Czars, as I recall.

Mr. Doyle. It may be. My information from reading is that they still had some underground Communist Party workings. It is a frank question, and were you in any way tied up through your parents with any Communist regime, even though as a youngster in kindergarten? The Communist Party now in this country has Communist Party schools and kindergartens, and camps, and summer camps for youngsters 5 to 10 years old.

Mr. Mates. I don't think you get into kindergarten at the age of 5. You don't enter kindergarten at the age of 5.

Mr. Doyle. The Communist Party takes them pretty young. I am not referring to a public kindergarten. I am referring to a Communist Party kindergarten or school or nursery.

Mr. Mates. You are joking about the year 1912, in a country which had completely—I don't know any more than you do except from reading about what the Czars' type of government was, and I don't think it was an epitome of democracy.

[fol. 642] Mr. Doyle. It is a question based on history, and I am asking you your information about it, if you have any, from what your parents told you, or from other sources.

(Witness consulted counsel.)

Mr. Mates. Frankly, I can't even remember my age of 5, and I don't remember coming here, let alone what they tried to tell me or teach me.

Mr. Doyle. I am not suspecting that you do remember very much at the age of 5, but you remember in later years whether or not your parents had ever put you in any such kindergarten or school or class.

Mr. Mates. Mr. Doyle, do you think it is really too fair to ask a person to testify against his own parents, no matter what they did, right or wrong?

Mr. Doyle. I didn't ask you that.

Mr. Mates. That is what you are implying.

Mr. Doyle. I am not assuming it was necessary—

Mr. Mates. Even in verbal claims, you don't have to testify against your father and mother and stuff like that.

Mr. Doyle. I am not asking you to testify against your parent; I am asking you as a matter of history whether or not you were a member of any such class or group as a youngster. I am not asking you to testify against your parents.

Mr. Mates. Well frankly, if I have got to answer it, I don't have any memory and I don't remember, as a child of 5, going to any schools as far as that goes.

Mr. Doyle. Can you testify as to where your father was naturalized in this country?

Mr. Mates. I think that I can testify, in the District of New York, Federal District Court, in the year 1918 or 1919, and I have gotten the papers but I don't have them with me.

Mr. Doyle. You have that record, Mr. Tavenner?

Mr. Tavenner. Yes, sir.

Mr. Doyle. May I take this occasion to say that which I have said to many, many labor leaders, ever since I have been on the committee, that if you are still in the Communist Party, or have any connection with it, why don't you as one of the labor leaders of the country get out of it, clean up your relations with it as soon as you can, and see that the labor union of which you are one of the leaders, gets just as far as possible away from the Communist layout in this country or any other country.

It makes me shiver no end when I realize that some of you labor leaders have been so closely identified and involved with the Communist conspiracy to take over American labor that you find it necessary in your own conscience and good faith to plead the fifth amendment.

So I want to urge you, as one of the labor leaders, to get so far away from it as soon as you can that you can help your own Government protect itself against the subversive activities of the American Communist Party. I want to urge you to do that. Lead toward strength for your adopted country instead of weakness.

Are there any other questions, Mr. Tavenner?

Mr. Tavenner. No, sir.

Mr. Scherer. I have no questions, except this observation, Mr. Doyle. I think that in view of the testimony or the lack of testimony that has been adduced in this case, although this witness derived his citizenship through his father, it still should be referred to the Department of [fol. 643] Justice to determine whether or not it is possible to commence denaturalization proceedings when a person has derivative citizenship.

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Testimony of Eugene Maurice Shafarman, Accompanied
by His Counsel, David Rein

Mr. Tavenner. What is your name, please, sir?

Dr. Shafarman. Eugene Maurice Shafarman.

Mr. Tavenner. Is it noted that you are accompanied by counsel. Will counsel please identify himself for the record?

Mr. Rein. David Rein, 711 14th Street NW., Washington, D. C.

Mr. Tavenner. Where were you born, Dr. Shafarman?

Dr. Shafarman. In the city of New York.

Mr. Tavenner. When?

Dr. Shafarman. 1st of December, 1904.

Mr. Tavenner. What is your profession?

Dr. Shafarman. I am a doctor of medicine.

Mr. Tavenner. Will you tell the committee, please, what your educational training for your profession has been?

Dr. Shafarman. After completing high school in the Bronx, New York City, I was out of school for 2 years, and then was admitted to the University of Wisconsin in the College of Letters and Science, in the year of 1926, where I had 3 years of premedical training and 2 years of medicine.

[fol. 644] Mr. Scherer. About how many doctors in Detroit, 2,000?

Dr. Shafarman. There are 3,000 doctors in Detroit.

Mr. Scherer. Suppose there are 25 persons going to Spain and all 25 of them come to you to be examined. How could you explain that?

Dr. Shafarman. I don't know that all 25, or how many it was, came to me, or how many came to me. I don't remember the details.

Mr. Scherer. We have some evidence that practically all of them came to you. I would like to know how you explain that. Who made the arrangements. There are 3,000 doctors in the city of Detroit. With 25 Communists going to Spain, how is it that practically all of them came to you for an examination? That is what I would like to know.

Dr. Shafarman. I have no explanation for that.

Mr. Doyle. May I ask one further question, Mr. Scherer?

Were you on any local committee for the aid of the Spanish revolution?

Dr. Shafarman. There was a North American Committee To Send Medical Aid to Spain.

Mr. Doyle. Were you a member of that?

Dr. Shafarman. I helped that committee.

Mr. Doyle. Were you chairman of that committee, or secretary?

Dr. Shafarman. I was not chairman. I was not secretary.

Mr. Doyle. But you were active on it as a member of the board, the advisory board?

Dr. Shafarman. No. I merely cooperated with the committee.

Mr. Doyle. Were you a member of the medical committee in connection with it?

Dr. Shafarman. I don't really remember the details of the committee, but it included professors from the University of Michigan.

[fol. 645] Mr. Doyle. At any rate, you were identified in the community as a member of that committee of medical men interested in the Spanish revolution?

Dr. Shafarman. I was interested in what was happening in Spain, and I'm sure my interests were reasonably well known in the community.

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[fol. 646] Mr. Tavenner. When did you first become acquainted with David Mates?

Dr. Shafarman. To the best of my knowledge and belief and recollection, it was probably in 1951, about 4 years ago.

Mr. Tavenner. What were the circumstances under which you then met him?

Dr. Shafarman. Well, he came to the office as a patient.

Mr. Tavenner. Did you learn then or at any later date that Mr. David Mates had been a member of the Communist Party?

Dr. Shafarman. No; I did not.

Mr. Tavenner. What was the first date on which you examined him as a basis for your letter of December 14, 1954?

Dr. Shafarman. If my memory serves me correctly, it was the 3d of December or the 2d or the 4th, somewhere in the first few days of December.

Mr. Tavenner. You knew at that time that Mr. Mates had been subpoenaed as a witness before this committee, did you not?

Dr. Shafarman. I did not know it at that time.

Mr. Tavenner. You, of course, knew it on December 14 when you addressed this letter to the chairman of this committee?

Dr. Shafarman. That was when I found out that Mr. Mates had been asked to appear before this committee, but I had already advised him almost 2 weeks previously to go home and to go to bed and stay there, because I thought his physical condition warranted a complete rest, a complete change of his usual occupational activities; and I examined him in the first few days of December and sent him home to go to bed and stay there. I thought he needed some rest and needed it badly.

Mr. Scherer. What was wrong with him?

[fol. 647] Dr. Shafarman. As I indicated to the committee, he was in a state of exhaustion; nervous exhaustion, severe, acute.

Mr. Scherer. Is that all that was wrong with him?

Dr. Shafarman. Well, that's plenty.

Mr. Scherer. I understand that is plenty, but I am asking if there was anything else wrong with him?

Dr. Shafarman. I thought that all the physical findings and all the symptoms and all the laboratory studies that were done could be explained by that diagnosis. That was my opinion after I had taken a history.

Mr. Scherer. Do laboratory findings show nervous exhaustion?

Dr. Shafarman. Yes, Congressman, laboratory findings can constitute support of evidence of nervous exhaustion.

Mr. Scherer. In what way?

Dr. Shafarman. By the elimination of such things as cardiac failure, kidney failure, specific digestive diseases—

Mr. Scherer. Did he have any cardiac failure?

Dr. Shafarman. By the elimination of such organic symptoms as will explain the fatigue, the lassitude, the diarrhea, the irritability, the nervousness, the palpitation. If you have a patient who presents a certain problem, and you arrive at a certain conclusion, you can support that conclusion by laboratory findings which are either negative or positive.

Mr. Scherer. Pardon me. In Mates' case were they all negative laboratory findings?

Dr. Shafarman. Except one very important one, and that was the basal metabolic rate which was very importantly depressed, and that's characteristic of this condition.

Mr. Scherer. You mean you gave him a metabolism test?

Dr. Shafarman. I gave him 3 or 4 of them.

Mr. Scherer. That was the only positive one?

Dr. Shafarman. The electrocardiogram was in the normal range, chest X-ray, urine, sigmoidoscopic.

Mr. Scherer. And with those negatives you concluded the things that he told you about his condition could be attributed only to nervous exhaustion then?

Dr. Shafarman. That was my diagnosis.

Mr. Scherer. You cannot see nervous exhaustion, can you?

Dr. Shafarman. I stated in that communication a straight professional opinion of a patient whom I examined, and I'll lend you all the textbooks you want if you want to read up on that subject, with all due respect to you.

I'll stand on my record and my professional qualifications on my diagnostic ability and training to arrive at a conclusion.

Mr. Tavenner. When did you arrive at the conclusion that he had recovered from his difficulty?

Dr. Shafarman. Oh, 3 or 4 weeks later. I don't remember the date exactly.

Mr. Tavenner. Did you tell the committee that he was not able to come to Washington until 3 or 4 weeks after you examined him?

Dr. Shafarman. At the time that I examined him I advised him to go home and go to bed and stay there and take certain medicines, and at that time on those occasions when I visited him at home, I continued him on that treatment, [fol. 648] on that regimen. It is called the Weir-Mitchell treatment. I believe he recovered in about 3 or 4 weeks.

Mr. Scherer. He recovered right after he was due to testify here, Doctor.

Mr. Tavenner. How long was that after the date on which he was subpoenaed to appear before this committee?

Dr. Shafarman. What was the date he was subpoenaed?

Mr. Tavenner. You saw him on December 3, 1954, I believe.

Dr. Shafarman. I saw him about five times after that.

Mr. Tavenner. How long was it after December 3 before he was well enough to have appeared before this committee?

Dr. Shafarman. I arrived at the conclusion that he had had the maximum benefit of medical treatment along about the 24th of January.

Mr. Scherer. When you treated Mr. Mates, you were keeping medical records, were you not?

Dr. Shafarman. Yes, sir.

Mr. Scherer. Do you have such records in your office?

Dr. Shafarman. Yes, sir.

Mr. Tavenner. Did the fact that he was subpoenaed for appearance before this committee for interrogation on the subject of communism influence you in the giving of this certificate?

Dr. Shafarman. Of course not. In the first place, I did not know that he had a subpoena until I got a call from him indicating that his lawyer would communicate with me to verify the advice that I had given to go home and go to bed. That was the first time I knew that he was under any obligation to appear before this committee.

Mr. Tavenner. But you knew that, of course, when you wrote this letter to the committee on the 14th day of December, because it is referred to in the letter? I say when you wrote that letter, were you influenced in any way by the fact that he was to appear here as a witness in a matter involving communism?

Dr. Shafarman. I was not influenced in any way by any consideration other than the requirements of the patient's physical status.

Mr. Tavenner. Were you a member of the Communist Party on December 14, 1954, when you executed this certificate?

Dr. Shafarman. I must refuse to answer that question on the basis of the provisions of the fifth amendment.

Mr. Tavenner. Are you now a member of the Communist Party?

Dr. Shafarman. I must refuse to answer that question on the basis of the privilege conferred upon me by the fifth amendment.

Mr. Tavenner. Is it your position that Mr. Mates was not physically able to make the trip to Washington on December 14?

Dr. Shafarman. That was the professional advice that I gave him. What was that date?

Mr. Tavenner. December 14.

Dr. Shafarman. That was my professional advice to Mr. Mates. I would not have wanted him to go anywhere even by ambulance.

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[fol. 649]

GOVERNMENT EXHIBIT No. 14 FOR IDENTIFICATION

Received

[Stamp—Filed—Jan. 16, 1964—Harry M. Hull, Clerk]

IN UNITED STATES DISTRICT COURT

April 30, 1963

William S. Hitz, Esq.
Assistant United States Attorney
United States Courthouse
Washington 1, D. C.

Re: United States v. Gojack
Criminal No. 821-62

Dear Mr. Hitz:

This is to confirm the understanding with respect to stipulations agreed upon for the trial of the above case at our conference on Wednesday, April 24.

1. The parties agree that there will be read into the record the testimony of the witnesses Robert Elliott Thompson and George David McClaren, as this testimony was given at the previous trial of the defendant, Criminal No. 1215-55. It is understood that this stipulation covers those questions and answers which are actually given at the trial and that colloquy between counsel and objections made are no part of the stipulation. For this purpose it is understood that neither side will make any point of the objections made at the previous trial which were either overruled or sustained by the court. Accordingly, objections which were made and overruled, will be withdrawn and questions to which objections were made and sustained will *not* be included in the stipulation.

2. As counsel for the government you will indicate that you have no objection to the authenticity or accuracy of the following exhibits which were offered at the previous trial, No. 1215-55:

(a) Defendant's exhibit No. 3. With respect to this, your stipulation covers the following: that the exhibit, with attachments, is an accurate copy of a statement of objections to the hearing filed by the defendant with the Committee on the morning of defendant's appearance before the Committee (see p. 261 of the transcript of the previous trial), and that you also agree to the accuracy of the attached clipping from the Herald Press of St. Joseph, Michigan, of October 21, 1955 (see transcript of previous hearing at p. 275).

(b) Defendant's exhibit No. 4. The printed Rules of the Committee on Un-American Activities.

(c) Defendant's exhibit No. 7. 1953 Annual Report of the House Committee on Un-American Activities.

[fol. 650] (d) Defendant's exhibit No. 8. Portions of the record from the joint appendix in the United States Court of Appeals, No. 12,797 in the case of *Watkins v. United States*.

(e) Defendant's exhibits Nos. 9 and 9a. With respect to these exhibits your stipulation provides that you will not object to their admission on the ground of hearsay or lack of authenticity (see transcript of the record, p. 358).

(f) It is also understood that either side may make references to the Congressional Record or any of the publications of the House Committee on Un-American Activities without the necessity of formal proof.

(g) Defendant may offer in evidence the testimony of Thomas I. Emerson as it is reproduced in the transcript of the record in the Supreme Court in the case of *Silber v. United States*, No. 454, October Term, 1961, at pp. 97-118. It is further understood that with respect to this item that the government does not concede that the matters to which the witness addressed himself were ones where expert testimony is permissible and it does not concede that the

witness is qualified in this or in any field. The government does not concede the accuracy or the validity of any testimony of fact, conclusion or opinion, which may be stated therein.

(h) The government may offer in evidence, without the necessity of formal proof, official documents of the Committee as were offered at the previous trial.

(i) The defense agrees to the accuracy of the government's exhibit 9 offered at the previous trial (see transcript, pp. 169-172).

3. It is further understood that with respect to exhibits covered by this stipulation, the agreement as to accuracy and authenticity does not constitute an agreement with respect to relevance and materiality and, with respect to any exhibit, either side may object to the admission of the exhibit on the grounds of materiality and relevancy.

4. It is further understood that in utilizing any of the material covered by this stipulation, the parties may refer to either the original transcript and exhibits or the reproduction of the transcript and exhibits as made in the transcript of record in the Supreme Court of the United States in No. 128, October Term, 1961.

It was also our understanding that it might be possible after further study to arrive at a stipulation with respect to the witness, Frank S. Tavenner, Jr., but that no agreement had been reached on that at the present time and that subject was to be left open for future discussion.

[fol. 651] I would appreciate your confirming this understanding by indicating your assent thereto or, in the alternative, if you feel that this letter is in any respect an inaccurate statement of that understanding, that you note it in your reply.

Sincerely,

David Rein

[fol. 652]

IN UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. 14-A FOR IDENTIFICATION

Received

[Stamp—Filed—Jan. 16, 1964—Harry M. Hull, Clerk]

[Letterhead of United States Department of Justice,
Office of the United States Attorney,
Washington, D. C.]

May 16, 1963

In reply, please refer to
initials and number

WH:11

Cr. No. 821-62

David Rein, Esq.
718 Sheraton Bldg.
711 14th Street, N. W.
Washington 5, D. C.

Re: United States v. Gojack
Criminal Case No. 821-62

Dear Mr. Rein:

Your letter of April 30, 1963, stating proposed stipulations with reference to the impending trial of the above case is agreeable to me except with respect to (a) and the Herald Press clipping referred to therein. As to that, the government stipulates that it will not question the accuracy of the clipping rather than that the government agrees to the accuracy of it.

With respect to (h), other like documents are to be covered thereby.

Further, the government stipulates that the testimony of Frank S. Tavenner, Jr., will be admissible as it was given in the previous trial.

It is understood that neither the government nor the defendant agrees to be limited to only such evidence as is covered by this stipulation.

Sincerely,

/s/ WILLIAM HITZ
William Hitz
Assistant U. S. Attorney

cc: Donner
5/17/63

[fol. 653]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S EXHIBIT No. 1

Received

STATEMENT OF OBJECTIONS TO HEARING AND
MOTION TO VACATE SUBPENAS

John Thomas Gojack, Julia Jacobs, and Lawrence Cover, having been subpoenaed by the House Committee on Un-American Activities for appearance at a hearing on February 28, 1955, respectfully move to vacate the said subpoenas and to set aside the hearing on the following grounds:

1. The Committee is not engaged in a legislative investigation for a bona fide legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by the newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) "out of business" and that with respect to the movants Gojack, and Jacobs "to bring out the facts that they are card carrying Communists. The rest is up to the community".

This purpose is not legislative in character and hence is outside the Committee's powers.

2. If the Committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

In any event, the power to inquire into crime is one which is confided exclusively to courts and grand juries under Article I Section 3 of the Constitution.

3. The purpose of breaking a union, is not one which is authorized by the Committee's basic resolution, Public Law 601.

4. Even if such a purpose were authorized by the Committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

[fol. 654] 5. The Committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

6. The Committee intends, as its chairman has announced, to exact compulsory disclosure of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry.

Respectfully submitted,

Frank J. Donner,
Counsel for Lawrence Cover,
Julia Jacobs, and
John Thomas Gojack

Cr. #821-62

[Stamp—Filed—Jan. 16, 1964—Harry M. Hull, Clerk]

House Un-American Committee Wants UE 'Out Of Business'

Gojack Telegram Accuses Walter Of Union Busting

By ROBERT E. THOMPSON
WASHINGTON, Feb. 14 (INS)—House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union, and refused to postpone a hearing into the union's activities, during the war criminal trials at the conclusion of World War II.

During a hastily-summoned session to hear protests from a union spokesman, Chairman Francis Walter (D-Pa.) and Rep. Morgan Moulder (D-Mo.) both declared the committee should try to break the hold of the union on defense plants. The CIO expelled the UE, a few years ago on charges that it was Communist dominated.

Accused By Gojack
Waller was accused in a telegram by the union's District Nine representative, John T. Gojack, of being a "union buster" because the committee plans to investigate the UE in Fort Wayne on Feb. 21 just prior to a union election at the Magnavox plant.

George Goldstein, Washington representative for the union, appeared before the committee to urge postponement of the hearing. Goldstein stalked angrily from the hearing room, however, when Walter demanded that he address the committee under oath. The union leader refused to have his name recorded. "I've got nothing to say anything unless it's nothing," Walter said.

Walter told Goldstein: "Nobody on this committee is interested in busting unions . . . we all have records . . . but all of us are interested in your union going out of business because it is not good for the United States."

Moulder, who will head the Fort Wayne probe, also asserted the committee should use its influence to break the UE.

Goldstein told Walter: "We will welcome your committee there, Fort Wayne." He said, however, the hearing should be held off until the election, slated for Feb. 24, is over.

The Fort Wayne investigation was sparked by the refusal of David Mates, a UE official from Detroit, to testify before the committee.

Monday At 10 A.M.

Hearings here by the House Un-American Activities Committee will get underway at 10 a.m. Monday in the Federal Courtroom on the second floor of the Fort Wayne Post Office Building.

Principal witnesses due to be called by the investigating subcommittee are John T. Gojack of Fort Wayne, District 9 president of the Independent United Electrical Workers Union, and David Mates of Detroit, UE international representative.

Rep. Walter (D-Pa.), chairman of the parent committee, said the hearings here are a "hang over" from the session held last December in Detroit, at which time Mates was unable to appear because of illness.

Thomas W. Beale Sr., committee clerk, said yesterday there is no way of telling how many days the hearings may continue.

Serving as counsel for the subcommittee in its appearance here will be Frank Tavenor, Virginia

attorney who served as prosecutor for the Mates case in Detroit.

[fol. 655]

STATEMENTS OF COMMITTEE CHAIRMAN DEALING WITH PURPOSE OF HEARING SCHEDULED FOR FEBRUARY 28, 1955

1. Newspaper clipping of Ft. Wayne JOURNAL GAZETTE headed "House Un-American Committee Wants UE 'Out of Business'".

STORY
NEWS ROOM TO 4-06
RECEIVING OFFICE TO 4-06

THE HERALD-PRESS

"REACHES THE HOMES IN BERRIEN COUNTY"

FOURTEEN PAGES FINAL EDITION

ST. JOSEPH, MICH., MONDAY, FEBRUARY 21, 1945

Weather

Clear, frosty, 10-15
Sun, 15-20
Clear, 15-20
Clear, 15-20

PRICE FIVE CENTS

RED PROBE MAY UPSET UE VOTE

[fol. 656]

**JOHN GOJACK,
JULIE JACOBS
FACE PROBES**

**Congressman Out To Prove
UE Officials Card-
Carrying Communists**

A house subcommittee activity committee hearing in Washington today may have a direct influence on the upcoming national "Jury" vote. The hearing is being held at the U.S. Capitol where the Red-baiting committee is on the verge of making a decision on the charges against John Gojack, UE president, and Julie Jacobs, UE secretary of Michigan and Lead 41.

"We intend to bring out the facts that they are card carrying Communists," said Congressman Frank Whitely (D-Mich.) chairman of the subcommittee.

"The vote is up to the community," said Whitely.

The hearing will probably be held in the House of Representatives. It is expected that the committee will report to the House on the charges against Gojack and Jacobs.

Gojack was elected UE president in 1943. He is a member of the UE National Executive Board. Jacobs was elected UE secretary of Michigan in 1944.

The charges against Gojack and Jacobs are that they are card carrying Communists. The committee is to hear evidence on these charges.

The hearing is being held at the U.S. Capitol. It is expected that the committee will report to the House on the charges against Gojack and Jacobs.

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The charges against Gojack and Jacobs are that they are card carrying Communists. The committee is to hear evidence on these charges.

2. Newspaper clipping from St. Joseph HERALD PRESS dealing with intention of Committee to show alleged Communist affiliation of subpoenaed witnesses.

[fol. 657]

DEFENDANT'S EXHIBIT No. 3

Received

[Stamp—Filed—Jan. 16, 1964—Harry M. Hull, Clerk]

IN UNITED STATES DISTRICT COURT

Information from the files of the
Committee on Un-American Activities
U. S. House of Representatives

Date: May 5, 1953

SUBJECT: John Thomas Gojack

The public records, files and publications of the Committee on Un-American Activities contain the following information concerning the individual named above:

In Report 1311 of the Special Committee on Un-American Activities dated March 29, 1944 (pages 18 and 19), the United Electrical, Radio and Machine Workers of America was included among twenty-one CIO unions in which the Committee found Communist leadership "strongly entrenched." At the 1949 Convention of the Congress of Industrial Organizations, the United Electrical, Radio and Machine Workers Union was expelled on grounds of Communist domination ("CIO Fact Sheet for the Press," 12th CIO Constitutional Convention, Chicago, November 20-24, 1950). After the expulsion of the United Electrical, Radio and Machine Workers Union, the CIO formed a "new anti-Communist" electrical union and at an organizational convention held in Philadelphia formally approved the name, International Union of Electrical, Radio and Machine Workers, and the identifying initials, IUE-CIO. "The convention inserted in the constitution of the new union clauses barring Communists or adherents of other totalitarian organizations from holding national or local office." (See: Article in the New York "Times" of December 1, 1949, page 3, datelined Philadelphia, November 30.)

In the May 22, 1950 (page 2) issue of the "IUE-CIO News," which is the publication of the new union, John T. Gojack, identified as a UE official, was cited as a Communist. The "UE News" of August 18, 1952 (page 9) reported that John T. Gojack, District 9 President, United Electrical . . . , assisted the Bargaining Committee of Local 910 at the Magnavox Company, Fort Wayne, Indiana.

It was reported in the "Daily Worker" of April 30, 1948 (page . . .) that John T. *Gojak*, District President of the United Electrical . . . , for the Indiana-Michigan area, had refused to vote against the anti-third party stand, and that he had been suspended from the state's PAC because of his refusal. Commenting on his own case, *Gojak* said the suspension of officers "who refuse to kow-tow to a policy which makes CIO-PAC an appendage of the strike-breaking Truman Democratic Party is a complete and a most flagrant violation of basic trade union democracy and individual political freedom." He referred to the Michigan PAC decision as "positive proof that this type of action makes CIO-PAC a tool of the Democratic Party."

The "Daily Worker" of September 20, 1949 (page 3) carried a lengthy article concerning the CIO United Electrical, Radio and Machine Workers convention in Cleveland, September 19, entitled "UE Convention Beats Redbaiting Splitters, 2 to 1, in Test Vote," in which John T. Gojack, President of the Michigan, Indiana region, stated: "Let's not kid ourselves, everybody here knows where the officers stand and everybody knows where the minority stands."

The following statement was found in an article which was datelined South Bend, Indiana, October 17, and published in the "Daily Worker" of October 18, 1949 (page 8): "All pro-UE candidates for office headed by District President John T. Gojack were re-elected in a convention of the Michigan-Indiana district of the United Electrical, Radio and Machine Workers held here. The ACTU-Carey red-baiting bloc put forward candidates only for the presidency and

secretary-treasurer post but in each case received the votes of only Fort Wayne's General Electrical Local 901. The other 27 locals in the district cast their ballots for Gojack and Merle Bennet, the other top officer."

[fol. 658] The Communist "Daily Worker" of May 15, 1941 (page 3) found occasion to run the photograph of John T. Gojack. The August 7, 1942 (page 1) issue of that newspaper carried a photograph of "Some of the Fort Wayne, Indiana, labor leaders who endorsed the resolution calling for immediate opening of a western front after 5,000 Fort Wayners had unanimously approved the resolution at a CIO-sponsored Win the War Rally." Mr. Gojack was one of the group and he was identified as "field organizer for UE." The "Daily Worker" (August 11, 1952, page 3) reported that John T. Gojack signed a telegram greeting Eugene Dennis on his 48th birthday. He signed a telegram to Attorney General McGranery protesting the denial of bail to non-citizens jailed under the McCarran Act, as reported in the "Daily Worker" of December 2, 1952 (page 3) in which source he was identified as International Representative, UERMWA, Fort Wayne, Indiana.

He was listed as a sponsor of the American Committee for Protection of Foreign Born on a photostatic copy of an undated letterhead of the 20th Anniversary National Conference . . . , U. E. Hall, Chicago, Illinois (December 8-9, 1951). The American Committee for . . . , was cited as subversive and Communist by the U. S. Attorney General in letters furnished the Loyalty Review Board and released to the press by the U. S. Civil Service Commission, June 1 and September 21, 1948. It was cited by the Special Committee on Un-American Activities as "one of the oldest auxiliaries of the Communist Party in the United States" (Report, March 20, 1944, page 166; also cited in Report, June 25, 1942, page 13).

A list published by the Civil Rights Congress revealed that John T. Gojack was nominated for the Continuations Com-

mittee of the Congress held in Detroit, Michigan, April 27-28, 1946. The Civil Rights Congress called a Bill of Rights Conference in New York City, July 16-17, 1949. According to the "Call" (part 5), Mr. Gojack was one of the additional sponsors of the Conference and was further identified in this connection as a member of the United Electrical . . . , of Indiana.

The Civil Rights Congress was cited as subversive and Communist by the U. S. Attorney General in letters to the Loyalty Review Board (press releases of Dec. 4, 1947 and Sept. 21, 1948). It was cited as an organization formed in April 1946 as a merger of two other Communist front organizations (International Labor Defense and the National Federation for Constitutional Liberties); "dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party" and "controlled by individuals who are either members of the Communist Party or openly loyal to it." (Committee on Un-American Activities, Report 1115, September 2, 1947, pages 2 and 19.)

John Gojack, identified as International Vice-President, UERMWA, Fort Wayne, Indiana, was named in the "Daily Worker" of February 1, 1951 (page 2) as a sponsor of the American Peace Crusade; he attended a Sponsors' Meeting, 1704 R Street, N.W., Washington, D. C., March 15, 1951, as shown on a "List of Those in Attendance, Sponsors' Meeting, American Peace Crusade . . . ; he was a sponsor and member of a delegation of the group to the State Department, March 15, 1951 ("Peace Crusade," Vol. 1, No. 6, March 26, 1951, page 3). A leaflet, "An Invitation to American Labor to Participate in a Peace Congress . . . " listed John Gojack, UE, Fort Wayne, Indiana, as a sponsor of the Peace Congress and Exposition held by the American Peace Crusade in Chicago, June 29-July 1, 1951. The "Daily Worker" (August 14, 1951, page 1) reported that John T. Gojack, head, Indiana-Michigan District of UEW of America, was chairman of a "Stop the Killing" campaign launched at the American Peace Crusade meeting on August

7. He was one of the initial sponsors of a drive "to make ending of Korean war a major issue in the 1952 election campaign" ("Daily Worker," issues of August 21, 1952, page 1 and August 24, 1952, page 5).

The American Peace Crusade was cited as an organization which "the Communists established" as "a new instrument for their 'peace' offensive in the United States" and which [fol. 659] was heralded by the Daily Worker "with the usual bold headlines reserved for projects in line with the Communist objectives" (Committee's Statement issued on the March of Treason, February 18, 1951 and Report 378 on the Communist "Peace" Offensive, April 25, 1951, page 51).

A letterhead of the Conference on Peaceful Alternatives to the Atlantic Pact dated August 21, 1949 showed John Gojack as one of those who signed an open letter to Senators and Congressmen urging defeat of President Truman's arms program; he signed a statement of the Committee for Peaceful Alternatives . . . calling for International Agreement to Ban Use of Atomic Weapons (statement attached to a press release of December 14, 1949, page 6). The Committee for Peaceful Alternatives . . . was cited as an organization which was formed as a result of the Conference for Peaceful Alternatives to the Atlantic Pact; and to further the cause of "Communists" in the United States" doing "their part in the Moscow campaign" (Committee's Report on the Communist "Peace" Offensive, April 25, 1951, page 54).

A circular letter of the American Youth for a Free World dated May 28, 1948 named John Gojack, General Vice President, UERMWA, CIO, as one of the delegates of that group's International Conference of Working Youth, August 1 to 10, 1948. The American Youth for a Free World was cited as an organization which is the affiliate in the United States of the World Federation of Democratic Youth and which has been "the Communist clearing house for international student and youth information." Offices of this organization are located at 144 Bleeker Street, New York,

N. Y. (Committee's Report No. 378, April 25, 1951, page 77.) As shown by an undated leaflet, "Prominent Americans Call For . . ." (received, September 11, 1950), John Gojack, identified as General Vice President, United Electrical . . . , Fort Wayne, Indiana, was an endorser of the World Peace Appeal.

The following reference to the World Peace Appeal is found in an Interim Statement of the Committee on Un-American Activities entitled "The Communist 'Peace Petition' Campaign," dated July 13, 1950:

"The text of the 'peace petition' was adopted in Stockholm on March 15-19, 1950, by the so-called World Peace Congress at the third session of its Permanent Committee, is announced to the world in the March 24, 1950, issue of 'For a Lasting Peace, For A People's Democracy!' official organ of the general staff of the 'international Communist conspiracy, the Information Bureau of the Communist and Workers (Cominform). In conformity with this directive, the Communist Party, USA, formulated its own 'peace plan' in the Worker for June 11, 1950. Calling for a 'Nation-wide drive for millions of signatures,' every Communist is notified that he 'has the duty to rise to this appeal.' On June 20, 1950, the 'peace petition' received the official stamp of approval from the Supreme Soviet of the U.S.S.R."

INFORMATION FROM THE FILES OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES
U. S. HOUSE OF REPRESENTATIVES

FOR: Honorable Homer Ferguson

SUBJECT: John T. Cojacks

JUL 12 1956

Ray M. Hall Clerk

F I L E D

August 20, 1955

1964

CR # 821-62

The public records, files and publications of the ^{MARY M. HULL, CLERK} contain the following information concerning John T. Cojacks. This report should not be construed as representing the results of an investigation by this Committee nor findings of this Committee. It should be noted that the individual referred to is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

In reports of January 3, 1960 (page 13) and March 29, 1964 (pages 18 and 19), the Special Committee on Un-American Activities cited the United Electrical, Radio and Machine Workers of America as a union in which the Committee found Communist leadership "strongly entrenched." At the 1949 Convention of the UEO, the United Electrical, Radio and Machine Workers Union was expelled on grounds of Communist domination (into 1949).

On November 10-21, 1950): After the expulsion of the union, the UEO formed a new anti-Communist electrical union and at an organizational convention held in Philadelphia formally approved the name, International Union of Electrical, Radio and Machine Workers, and the identifying initials, IUR-UEO. "The convention is carried in the constitution of the new union clauses barring Communists or adherents of other totalitarian organizations from holding national or local offices" (See: "New York Times," December 1, 1949, page 3, article datelined Philadelphia, Nov. 30).

In the May 22, 1950 (page 2) issue of the "IUR-UEO News," which is the publication of the new union, John T. Cojacks, identified as an official, was cited as a Communist. The "IUR News" of August 18, 1953 (page 9) reported that John T. Cojacks, District 9 President, United Electrical . . . assisted the Bargaining Committee of Local 910 at the Magnavox Company, Fort Wayne, Indiana.

It was reported in the "Daily Worker" of April 30, 1964 (page 5) that John T. Cojacks, District President of the United Electrical . . . for the Indiana-Michigan area, was refused to vote against the anti-Communist party, and that he had been suspended from the state's PLO because of his refusal. Commenting on his own case, Cojacks said the suspension of officers who refuse to vote to a policy which makes UEO-PLO an appendage of the strike-breaking Truman Democratic Party is a complete departure from UEO policy as expressed at the last convention in 1947 and a most flagrant violation of basic trade union democracy and individual political freedom." He referred to the Michigan PLO decision as "positive proof that this type of action makes UEO-PLO a tool of the Democratic Party."

The "Daily Worker" of September 20, 1949 (page 3) carried a lengthy article concerning the UEO United Electrical, Radio and Machine Workers convention in Cleveland, September 19, entitled "UEO Convention Boasts Redbaiting Splitters, 2 to 1, in Test Vote," in which John T. Cojacks, President of the Michigan, Indiana region, stated: "Let's not kid ourselves, everybody here knows where the officers stand and everybody knows where the minority stands."

[fol. 662]

- 3 -

formed in April 1946 as a merger of two other Communist-front organizations (International Labor Defense and the National Federation for Constitutional Liberties); "dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party and controlled by individuals who are active members of the Communist Party or openly loyal to it." (Committee on Un-American Activities, Report III, September 2, 1949, pages 1 and 19.)

John Bejtle, identified as International Vice-President, UMWUA, Fort Wayne, Indiana, was named in the "Daily Worker" of February 1, 1951 (page 1) as a member of the American Peace Granda; he attended a meeting at 1440 Lexington, N. Y., Washington, D. C., March 15, 1951, as shown on a list of those in attendance, "Sponsors' Meeting, American Peace Granda . . . if he was a sponsor and member of a delegation of the group to the State Department, March 15, 1951 ("Peace Grander," Vol. 1, No. 6, March 16, 1951, page 3). A leaflet, "An Invitation to American Labor to Participate in a Peace Congress . . ." listed John Bejtle, III, Fort Wayne, Indiana, as a member of the Peace Congress and reported that the American Peace Granda is holding, Fort Wayne, Indiana, from January 1, 1951, to February 1, 1951, (August 24, 1951, page 2) reported that John Bejtle, head, Indiana-Michigan District of UMW of America, was chairman of a "from the Illinois Granda" held at the American Peace Granda meeting at Chicago. He was one of the initial sponsors of a drive "to make calling of laborers a major issue in the 1952 election campaign" ("Daily Worker," Issues of August 21, 1951, page 1 and August 24, 1951, page 5).

The American Peace Granda was cited as an organization which "the Granda is established" as a "the Granda" for their "peace" activities in the United States" and which was heralded by the Daily Worker "with the usual bold headlines reserved for projects in line with the Communist objectives" (Committee's Statement issued on the March of Treason, February 18, 1951 and Report 378 on the Communist "Peace" Offensive, April 15, 1951, page 51).

A letterhead of the Granda in French, Altonville to the Atlantic Post dated August 21, 1949 showed John Bejtle as one of those who signed an open letter to Senators and Congressmen urging defeat of President Truman's new program; he signed a statement of the Committee for Peaceful Alternatives . . . calling for International Action to the U.S. of America (statement attached to a press release of December 24, 1949, page 6). The Committee for Peaceful Alternatives . . . was cited as an organization which was formed as a result of the Conference for Peaceful Alternatives to the Atlantic Post and to further the cause of Communism in the United States" doing "their part in the Negro Granda" (Committee's Report on the Communist "Peace" Offensive, April 15, 1951, page 51).

A circular letter of the American Youth for a Free World dated May 18, 1946, named John Bejtle, General Vice President, UMWUA, CIO, as one of the delegates of that group's International Conference of Working Youth, August 1 to 18, 1946. The American Youth for a Free World was cited as an organization which is the affiliate in the United States of the World Federation of Democratic Youth and which has been "the Communist Party's house for international, national and youth information." Offices of this organization are located at 144 Lexington Street, Fort Wayne, N. Y. (Committee's Report No. 378, April 15, 1951, page 77).

As shown by an undated leaflet: "President's American Call For . . ." (received, September 11, 1950), John Edgar Hoover, identified as General Vice President, United Electrical . . . , forfeited, indicated was an endorser of the World Peace Appeal.

The following reference to the World Peace Appeal is found in an Interim Statement of the Committee on Un-American Activities entitled "The Communist 'Peace Fatties' Committee" dated July 13, 1950.

"The text of the 'peace petition' as adopted in Stockholm on March 15-19, 1950, by the so-called World Peace Congress at the third session of its Permanent Committee, is announced to the world in the March 26, 1950, issue of 'For a Lasting Peace, For A People's Democracy': official organ of the general staff of the International Communist conspiracy, the Information Bureau of the Communist and Workers Parties (Cominform). In conformity with this directive, the Communist Party, USA, formulated its own 'peace plan' in a letter for June 11, 1950, calling for a 'million-man march for millions of Americans'. Every Communist is required that he 'has the duty to sign to this plan'. On June 26, 1950, the 'peace petition' received its official stamp of approval from the Supreme Soviet of the U.S.S.R."



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[fol. 664]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18348

JOHN T. GOJACK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
for the District of Columbia

OPINION—Decided May 27, 1965

Mr. Frank J. Donner of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. Robert L. Keuch, Attorney, Department of Justice, with whom *Assistant Attorney General Yeagley*, *Messrs. David C. Acheson*, United States Attorney, and *Kevin T. Maroney*, Attorney, Department of Justice, were on the brief, for appellee. *Mr. Frank Q. Nebeker*, Assistant United States Attorney, also entered an appearance for appellee.

Before *BAZELON*, Chief Judge, and *BURGER* and *WRIGHT*, Circuit Judges.

[fol. 665] PER CURIAM: On February 28 and March 1, 1955, appellant testified at a subcommittee hearing of the House of Representatives Committee on Un-American Activities. At that hearing he refused to answer certain questions, for which he was convicted for contempt of Congress.¹ That

¹ 2 U.S.C. §192.

conviction was reversed by the Supreme Court for insufficiency of the indictment.² Appellant was then convicted on a new indictment, which alleged refusal to answer six questions asked by the subcommittee.³ This appeal followed.

Appellant argues that the subcommittee had no proper legislative purpose and that he was not adequately informed by the subcommittee of the legislative pertinency of its [fol. 666] questions. These arguments are foreclosed by *Barenblatt v. United States*, 360 U.S. 109 (1959). Appellant further contends that the indictment was insufficient because it did not specifically recite the subcommittee's authority to conduct the investigation here, and that there was no adequate proof at trial of the subcommittee's authority. We find no merit in these contentions.

There is one serious question presented by this record which appellant has not alleged as grounds for reversal. At the beginning of the February 28 hearing, appellant's counsel submitted a written motion to the subcommittee

² *Sub nom. Russell v. United States*, 369 U.S. 749 (1962).

³ The questions were:

"1. On February 28, 1955. Question: Are you now a member of the Communist Party?"

"2. On March 1, 1955. Question: You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.

"3. On March 1, 1955. Question: Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?"

"4. On March 1, 1955. Question: May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?"

"5. On March 1, 1955. Question: Did you take active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade?"

"6. On March 1, 1955. Question: What method was used to get you as an original sponsor? [That is, original sponsor of the American Peace Crusade.]"

contesting its jurisdiction to question appellant.⁴ At that time, the subcommittee chairman stated, "You may file the [fol. 667] motion; and then whatever action the committee desires to take upon it, we will take." No explicit ruling was made on this motion until the conclusion of the March 1 hearing, when the chairman stated:

⁴ "John Thomas Gojack, . . . having been subpoenaed by the House Committee on Un-American Activities for appearance at a hearing on February 28, 1955, respectfully move[s] to vacate the said subpoenas and to set aside the hearing on the following grounds:

"1. The Committee is not engaged in a legislative investigation for a bona fide legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack, . . . 'to bring out the facts that they are card carrying Communists. The rest is up to the community'.

"2. If the Committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

"In any event, the power to inquire into crime is one which is confided exclusively to courts and grand juries under Article I Section 3 of the Constitution.

"3. The purpose of breaking a union, is not one which is authorized by the Committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the Committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The Committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

"6. The Committee intends, as its chairman has announced, to exact compulsory disclosure of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry,"

[A]t the beginning of the hearings, counsel for John T. Gojack . . . filed a statement of objections to hearing and a motion to vacate the subpoenas. At that time the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, nunc pro tunc, the objections and motion to vacate subpoenas are overruled.

This ruling was made after appellant's refusal to answer the questions for which he was here convicted.⁵

Although the subcommittee did specifically direct appellant to answer the questions at issue, its failure specifically to overrule appellant's motion may have left ambiguous whether the subcommittee had considered the objections raised in appellant's motion or whether it was ignorant of [fol. 668] them before it directed an answer. "[A] clear disposition of the witness' objection is a prerequisite to prosecution for contempt" *Quinn v. United States*, 349 U.S. 155, 167 (1955). The subcommittee must "advise the witness of [its] position as to his objections . . . [to give him] a clear choice between standing on his objection and compliance with a committee ruling." *Bart v. United States*, 349 U.S. 219, 223 (1955).⁶

On the previous appeal, this court ruled, "That [appellant's motion] was in fact denied is clear from the fact

⁵ After this ruling, appellant refused to answer several questions. He was not indicted for those refusals. Compare *Flaxer v. United States*, 358 U.S. 147 (1958).

⁶ During his testimony, appellant attempted repeatedly to state his objections and he was repeatedly interrupted by subcommittee members on the ground that he was "proceeding again to read that prepared statement." The basis for these interruptions was apparently the Committee's rule that "a prepared or written statement" can be read into the record only upon Committee approval at the conclusion of a witness' testimony. The effect of the interruptions may have been, however, to deprive appellant of any opportunity to determine whether the subcommittee was aware of the basis for his objections and whether it overruled those objections.

that [appellant was] . . . called, sworn and queried.”⁷ It is not clear whether we are bound by that ruling. But since appellant’s experienced counsel does not challenge that ruling on this appeal,⁸ we are not disposed to consider the matter.

The judgment of the District Court is

Affirmed.

[fol. 669] *BURGER, Circuit Judge, concurring in the result:* I cannot agree that the issue concerning denial of Appellant’s motion to the Committee is open. The point was not raised to the Committee; it was not raised in the District Court; it was not raised in this court.

The orderly and efficient administration of the business of the courts ought to preclude—and I think it does preclude—a litigant from ignoring a point which is obvious even though not valid only to have it raised *sua sponte* by a member of the reviewing court.

That the point discussed by the court has no merit is shown by our own holdings that a ruling may be implicit in the conduct of a tribunal. Judge Wright pointed this out in *Cooper v. United States*, — U.S.App.D.C. —, —, 337 F.2d 538, 539 (1964), where he articulated the reasons underlying the summary affirmance of the conviction where the District Court proceeded to trial without entering an order or formally ruling on the Defendant’s competence to stand trial. “The court did not in terms hold that Cooper was competent. But its ruling to this effect is clear from its actions [in proceeding to trial].”

Appellant here moved to vacate the subpoena and “set aside” the hearing. His objection went to the fact of any questioning at all. To suggest that continuance of the hearing did not dispose of Appellant’s motion by denying it is to ignore the realities of the situation. Nor is the rule of

⁷ 108 U.S.App.D.C. 130, 138, 280 F.2d 678, 685 (1960).

⁸ Appellant’s brief, at p. 52, does refer to the “retroactive rejection” of his motion, but only to support his argument that the subcommittee did not adequately advise him of the legislative pertinency of its questions.

the *Quinn* and *Bart* cases, cited by the court, to the contrary. Those cases significantly did not involve express directions to answer such as Gojack here received. See 349 U.S. at 222. Moreover, we expressly held the *Quinn* rule unavailable to Appellant on his former appeal. *Gojack v United States*, 108 U.S.App.D.C. 130, 139, 280 F.2d 678, 687 (1960).

For these reasons I am bound to express my disagreement with the court's discussion of this point.

[fol. 670]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,348

Criminal 821-62

JOHN T. GOJACK, Appellant,

—v.—

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
for the District of Columbia.

Before: Bazelon, Chief Judge, and Burger and Wright,
Circuit Judges.

JUDGMENT—May 27, 1965

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam.

Dated: May 27 1965

Separate opinion by Circuit Judge Burger concurring in the result.

[File endorsement omitted]

[fol. 671]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 18,348

JOHN T. GOJACK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the
District of Columbia

PETITION FOR REHEARING—Filed June 11, 1965

Appellant respectfully petitions the Court for a rehearing of its affirmance of the judgment of conviction. We confine ourselves to three issues: (1) the failure of the Committee to make timely response to appellant's objections and to direct him to answer; (2) the Court's approval of the indictment and the silence of its *per curiam* opinion concerning the Court's differences with the well-reasoned contrary views of a sister circuit court of appeals; (3) the issue of proof of Committee approval of the investigation and of the authorization to conduct the hearing as required by its Rule I.

[fol. 672]

I. THE DIRECTION ISSUE

A. The Relevant Facts.

Prior to the commencement of the hearing certain facts reflecting the exposure purpose of the hearing came to ap-

[File endorsement omitted]

pellant's attention (Main Br. 3-6). The only avenue open to him to protect himself against such threatened exposure and an improper course of interrogation by the Committee was to file a motion before the Committee calling the facts to its attention and objecting to the hearing and the proposed interrogation. Compare *Yellin v. United States*, 374 U.S. 109, 122.

Consequently, on the first day of a two-day hearing counsel for appellant filed on his behalf and on behalf of two other witnesses a motion, the contents of which have been set forth in the opinion of the Court (at footnote 6). The motion sought to bring to the attention of the Committee facts relating to the announced purpose of the hearing in support of the contentions that (a) the Committee was not a competent tribunal in that it was seeking to exercise non-legislative powers; (b) it lacked jurisdiction; (c) its announced purposes were unauthorized by its basic resolution, and (d) the interrogation which the Chairman had announced it would undertake was barred by the First Amendment.

When the motion was presented to the subcommittee prior to the commencement of the hearing, the Chairman of the subcommittee stated (Hearings, p. 20):

[fol. 673] "Mr. Moulder. You may file the motion; and then whatever action the committee desires to take upon it, we will take."

Counsel then asked whether the motion would be physically incorporated in the record and was told (*ibid.*) that "we will decide that question after we have examined the motion." Counsel thereupon filed two copies of the motion with the Committee and the first witness, on whose behalf the motion was filed, was thereupon sworn.

When appellant was sworn he attempted to state orally the gist of the objections filed in the motion (Hearings, p. 71) but was interrupted by the Chairman who told him that he was not permitted to "make an opening statement

preceding the testimony you are about to give." The witness continued to try to get into the record the grounds of his objections, but was again charged with violating the rules of the Committee. He stated he was merely seeking to explain his position (*ibid.*). Again he was told that he could not state his objections prior to his interrogation (Hearings, pp. 71-72). When the witness made a fourth attempt to present to the Committee the substance of the objections contained in the motion he was interrupted by the Chairman and told that his conduct was "not tolerated by the committee" (Hearings, p. 72).

After answering a few preliminary questions, the witness tried for a fifth time to present to the Committee the objections which had been presented in the motion (Hearings, p. 72): "Before I answer that question I want to explain that this is not a legislative investigation for a [fol. 674] bona fide legislative purpose." But he was again rebuked for violating Rule IX of the Committee's rules which requires that copies of prepared or written statements be filed in advance with the Counsel of the Committee (*ibid.*).

Thereafter the witness repeatedly sought to place in the record, in explaining the grounds for his refusal to answer questions, some of the objections which had been advanced in the motion. However, he was systematically interrupted by the Committee members who prevented him from completing his objections (Hearings, pp. 72, 84, 86, 87, 106, 109) and who were concerned only with establishing, for purposes of perfecting a contempt case,¹ that the witness had not pleaded the Fifth Amendment (*ibid.*). At the conclusion of the hearing and after all of the questions which gave rise to the indictment were asked, the Chairman stated (Hearings, p. 153):

"Mr. Tavenner, at the beginning of the hearings, counsel for John Thomas Gojack, Julia Jacobs and Law-

¹ At the close of appellant's testimony, the subcommittee voted to recommend that appellant be cited for contempt. (Hearings, p. 156.)

rence Cover, filed a statement of objection to hearings and a motion to vacate the subpoenas. At that time the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, *nunc pro tunc*, the objections and motion to vacate subpoenas are overruled."

B. The Applicable Principles.

The Supreme Court has upheld contentions that the Committee [fol. 675] failed properly to respond to the objections of witnesses in four cases: *Quinn v. United States*, 349 U.S. 155 (1955); *Emspak v. United States*, 349 U.S. 190 (1955); *Bart v. United States*, 349 U.S. 219 (1955), and *Flaxer v. United States*, 358 U.S. 147 (1958).

The basic rulings of these cases, all of which reversed decisions of this Court, are distilled and anticipated in the dissenting opinion of Judge Bazelon in the *Quinn* case; (203 F. 2d 20, at 33):

"Although there is no talismanic formula which the Committee must use in directing the witness to answer, I would state the principle this way: It must appear from all the circumstances that (1) the witness was clearly apprised, and not left to the risk of guessing upon pain of criminal penalties, whether the grounds for his objection to answering were accepted or rejected, and that (2) if rejected, he was given another opportunity to answer. Under this view the Committee would necessarily have to inform the witness *in time* to allow opportunity for answering.

.

"A conclusive presumption of intent to violate the statute might attach to a naked refusal to answer, *i.e.*, a refusal without a statement, at the time, of the reason therefor. * * *

"It is only after an intent to refuse has been established in accordance with the foregoing principles that

the witness is 'bound rightly to construe the statute.' And since, except for naked refusals, intent cannot be imputed to the accused as a matter of law, it must be determined as a question of fact, from all the circumstances, as an essential element of the crime. Before the court can consider the validity of any grounds, not plainly frivolous, for objecting to answer, intent to refuse must be thus determined." (*Italics in original; footnotes omitted.*)

It need only be added that since the direction requirement [fol. 676] forms the basis of the proof that the refusal of the witness was deliberate and intentional (see *Quinn v. United States*, *supra*, at 165), it must be established beyond a reasonable doubt.

It seems clear that under the principles sketched above the Committee was required to overrule appellant's objections as stated in his motion prior to the time he was forced to give testimony and to apprise him that it had overruled these objections and to require him to proceed.

The objections were manifestly not frivolous; they were presented in documented fashion and called for some response by the Committee. Not only did the Committee fail to overrule the objections in the motion but it prevented the witness from presenting them orally. The witness, thus, was not given a "clear choice between standing on his objections and compliance with the committee ruling" (*Bart v. United States*, *supra*, at 223).

Nor can it be contended that the Committee met its obligation of apprising the witness and of giving him a choice between answering or standing on his objections by the directions which it did give. The Committee made it clear at the outset that it would not hear or entertain the objections set forth in the motion when they were orally presented by the witness. Here, as in the *Bart* case, 349 U.S., at 223, the Committee made it quite clear that it had no intention of ruling on the objections presented by the witness. Thus, when he managed to smuggle parts

of them into the record on isolated occasions he had no way of knowing whether these grounds for his refusals had been considered and rejected.

This ambiguity was inescapable in view of (a) the Committee's original postponement of the response to the motion when it was filed; (b) its failure to respond to the motion when he took the stand; (c) its rebuffs when he sought to present the objections orally, and (d) its interruptions when he tried to incorporate them into his refusals.

In addition, none of the witness' truncated oral objections which preceded the Committee's directions incorporated the factual material attached to the objections in the motion. Under these circumstances, it can hardly be doubted that the witness was "left to the risk of guessing upon pain of criminal penalties, whether the grounds for his objection to answering were accepted or rejected . . ." (203 F. 2d, at 33).

Finally, even if the subcommittee's directions were not vitiated by the considerations which we have discussed, the fact is that the oral objections made by the witness here were not coextensive with the grounds urged in the motion. Since the subcommittee was required to communicate to the witness its response to *all* of his objections the fact that it directed him to answer after hearing some of them is no defense to our contention.

Thus of the six grounds presented in the motion, only two were urged in response to the Count 1 question (Hearings pp. 86-87; J.A. 74-76); two, in response to the Count 2 [fol. 678] question (Hearings, pp. 102-104; J.A. 91-92); one to the Count 3 question (Hearings, pp. 106-107; J.A. 94); one to the Count 4 question (Hearings, p. 134; J.A. 102-3); one to the Count 5 question (Hearings, p. 145; J.A. 104); and "for the reasons previously stated" to the Count 6 question (Hearings, pp. 149-150; J.A. 108-109).

It is of course no answer to suggest that the grounds of the motion were invalid. *Bart v. United States*, *supra*, at pp. 221-222. Nor could the subcommittee's failure to act

be retroactively cured by its *nunc pro tunc* denial of the motion or by its belated claim of a vote to overrule the motion at the time it was filed. The subcommittee was obliged not only to act but to apprise the witness of its action at the time of the interrogation. Nor can it be contended, as does the dissent, that a timely denial of the objections was "implicit" in the "continuance of the hearing." This argument revives precisely the same error with respect to the need for a clear appraisal and direction which the Supreme Court corrected in the *Quinn* case, 349 U.S. at 167.

It is true that on the previous appeal the Court commented in passing that the Committee's denial of the motion could be inferred from the fact that the witness was "called, sworn and queried" 280 F. 2d 678, 685. But the contention now raised with respect to the failure of the Committee to apprise the defendant of any ruling on his motion was neither urged nor considered in the earlier appeal. And, of course, the availability of this contention then does not bar the Court from considering it now. Compare [fol. 679] *Shelton v. United States*, 327 F. 2d 601.

Nor should the Court withhold disposition of the issue because it was not clearly raised on this appeal.

There are compelling reasons why the Court should grant rehearing on this issue and reverse the conviction below. The direction contention, though not treated explicitly, was suggested on the appeal and was certainly not abandoned. As the Court notes, we did point out (although in a slightly different context) that the Committee's *nunc pro tunc* disposition of appellant's objections as stated in the motion could not retroactively cure his claimed objections to the questioning, since the Committee's action did not take place at the time the objections were made. This is a criminal case and it would be unjust if the appellant were jailed and fined because of the shortcomings of counsel. Moreover, we are dealing here not with a technical question but with a question of intent and deliberateness, an essential element of the offense. See cases cited *supra*. And

in *Silber v. United States*, 370 U.S. 717, the Supreme Court reversed a conviction despite a comparable lapse by counsel.

II.

The Conflict With the Second Circuit

We contended in our brief that the indictment and the proof were defective because of the failure to set forth or [fol. 680] show the subcommittee's delegated authority to conduct the investigation. In support of our contention, we relied on the decision of the Court of Appeals for the Second Circuit in *Seeger v. United States*, 303 F. 2d 478. As matters now stand, the rights of defendants in contempt of Congress cases depend on where they happen to be indicted. The same indictment can be valid in the District of Columbia and invalid in New York. This should not be permitted to occur unless there are deeply held and unavoidable differences of opinion between the two Circuits.

But the Court's *per curiam* opinion gives no reason for its disagreement with its sister circuit. We submit that the Court ought not to keep silent concerning its views when they are in disagreement with the well-reasoned views of another circuit. And this is particularly so because of the responsibilities for guidance which are imposed on this Court by reason of the large number of contempt of Congress cases which are tried in this circuit. Because the decision stirs a conflict within the meaning of Rule 19 of the Supreme Court rules, we think that it is especially incumbent on the Court to explain the grounds of its decision in order to facilitate resolution of this conflict in the event it is necessary to seek review by the Supreme Court.

III.

The Failure to Comply With the Committee's Rules

The Court has failed altogether to consider our contention that the hearings were conducted without approval of a majority of the committee members, in violation of Rule

[fol. 681] 1. This Rule is one of those rules of congressional committees which seek to reconcile power and responsibility.² Cf. *Shelton v. United States*, 327 F. 2d 601, 606, fn. 12. It makes a special claim on the courts where, as here, the investigation touches on "beliefs, expressions or associations." *Shelton v. United States*, *supra*, fn. 12, citing *Watkins v. United States*, Note 9, 354 U.S. 197, 215.

The rule requires no elaborate exegesis. It simply means that before an investigation is undertaken, a majority of the committee, in this case, five members, must approve the undertaking. Here there is not an iota of evidence to show that the rule was complied with. Nor could prior approval be inferred from what occurred afterwards. The witness has a right to have the full committee responsibly determine in advance whether or not to conduct the investigation. Because the investigation invaded the witness' rights under the First Amendment, it was particularly important that the Committee observe the rule meticulously. Compare *Yellin v. United States*, 374 U.S. 109, 124. Here, no more than in the *Shelton* case; could appellant's First Amendment freedoms be "subject to *ex post facto* ratification."

[fol. 682]

Conclusion

It seems to us that the Court's disposition of this case ignores the stricture of the Supreme Court in *Watkins* (354 U.S. 178, 208) that in cases of this sort "the courts must accord to the defendants every right which is guaranteed to defendants in all other criminal cases." The Court has

² See also Rule 1, Senate Government Operations Committee; Rule 8 House Government Operations Committee; Rule 1 House Ways and Means Revenue Subcommittee.

See also report of the Subcommittee on Rules, Senate Committee on Rules and Administration, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session) p. 15; Hearings before the Subcommittee on Rules, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session, pp. 136, 141-142, 261) (testimony of Harold H. Velde) and 291 (testimony of Robert Kunzig).

also, in our view, upheld the invasion of First Amendment rights without regard to those principles to which it was so alert in *Shelton*. In addition, the Court has sanctioned practices of the Committee in important areas of its functioning which will inevitably imperil the rights of all witnesses who appear before it.

For all of the above reasons, re-hearing should be granted and the conviction should be reversed.

Respectfully submitted,

Frank J. Donner

David Rein, Attorneys for Appellant.

Certificate

I certify that the foregoing petition for rehearing is presented in good faith and not for delay.

David Rein

[fol. 683] Certificate of Service (omitted in printing).

[fol. 684]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18348

JOHN T. GOJACK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Before:

Bazelon, Chief Judge, Burger and Wright,
Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING—July 23, 1965

On consideration of appellant's petition for rehearing,
it is

Ordered by the court that the aforesaid petition is denied.

Per Curiam.

[File endorsement omitted]

[fol. 685] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 686]

SUPREME COURT OF THE UNITED STATES

No. _____, October Term, 1965

JOHN T. GOJACK, Petitioner,

VS.

UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—July 30, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 21, 1965.

Byron R. White, Associate Justice of the Supreme Court of the United States.

Dated this 30th day of July, 1965.

[fol. 687]

SUPREME COURT OF THE UNITED STATES

No. 594, October Term, 1965

JOHN T. GOJACK, Petitioner,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—December 6, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SEP 21 1965

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1965
No. **594**

JOHN T. GOJACK,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions and Rules Involved	2
Questions Presented	2
Statement of the Case	4
A. The Proceedings Before the Committee	4
B. Judicial Proceedings	14
1. The District Court	14
2. The Court of Appeals	17
Reasons for Granting the Writ	18
CONCLUSION	30
Appendix A:	
Judgment of United States Court of Appeals	31
Appendix B:	
Order of United States Court of Appeals	33
Appendix C:	
Opinion of United States Court of Appeals	34
Appendix D:	
Constitutional and Statutory Provisions and Rules	40

TABLE OF AUTHORITIES

Cases:

Abie State Bank v. Weaver, 282 U. S. 675	26
Baggett v. Bullitt, 377 U. S. 360	30
Barenblatt v. United States, 360 U. S. 109	20, 23, 24, 26, 29, 30
Bart v. United States, 349 U. S. 219	27, 28
Bates v. Little Rock, 361 U. S. 516	25
Block v. Hirsh, 256 U. S. 135	26
Braden v. United States, 365 U. S. 431	24
Chastleton v. Sinclair, 264 U. S. 543	26
Deutch v. United States, 367 U. S. 456	19
Dombrowski v. Pfister, 380 U. S. —	30
Emspak v. United States, 349 U. S. 190	27
Endo, Ex parte, 323 U. S. 283	29
Flaxer v. United States, 358 U. S. 147	27
Gibson v. Florida, 372 U. S. 539	25
Herabayashi v. United States, 320 U. S. 81	29
N. A. A. C. P. v. Alabama, 357 U. S. 449	25
Noble State Bank v. Haskell, 219 U. S. 104	26
Quinn v. United States, 349 U. S. 155	3, 24, 27
Russell v. United States, 369 U. S. 744	1, 14, 18, 19, 21
Sacher v. United States, 356 U. S. 576	19
Silber v. United States, 370 U. S. 717	15, 19, 21, 28

United States v. Bowen, 381 U. S. —	30
United States v. Cross, 178 Fed. Supp. 303 (D. C. D. C.)	24
United States v. Lamont, 236 F. 2d 312 (C. A. 2), aff'g 18 F. R. D. 34 (S. D. N. Y.)	18, 19, 22
United States v. Lovett, 328 U. S. 303	30
United States v. Orman, 207 F. 2d 148 (C. A. 3)	19
United States v. Seeger, 303 F. 2d 478	18, 21
Watkins v. United States, 354 U. S. 178	3, 19, 20, 21, 24, 26, 27
Wilkinson v. United States, 365 U. S. 399	24
Yellin v. United States, 374 U. S. 109	22

Constitution:

Article I, Section 9, Clause 3	3, 30
First Amendment	3, 13, 20, 24, 25, 28, 29
Fifth Amendment	12
Sixth Amendment	18

Congressional Record:

101 Cong. Record 1906, 84th Cong. 1st Sess. Feb. 22, 1955	7
111 Cong. Record 1592, Feb. 1, 1965 (Daily Edition) ..	29
111 Cong. Record 7740, 7750, April 14, 1965 (Daily Edition)	29

Statutes:

R. S. §102 (2 U. S. C. §192)	1, 14, 18
28 U. S. C. §1254(1)	2

Taft-Hartley Act:

Section 9(h)	13, 25
--------------------	--------

Committee Rules and Reports:

Rule 1, House Ways and Means Revenue Subcommittee	22
---------------------------------------------------	----

Rule I, of the Rules of Procedure of the House Committee on Un-American Activities	2, 8, 17, 21, 22
------------------------------------------------------------------------------------------	------------------

Rule I, Senate Government Operations Committee	22
-----------------------------------------------------	----

Rule 8, House Government Operations Committee	21
----------------------------------------------------	----

Rule IX of the Committee Rules	12
--------------------------------------	----

Rule XI, par. 26 of the Rules of the House of Representatives	8
---------------------------------------------------------------------	---

Congressional Investigations of Communism and Subversive Activities, Summary-Index, 1918-1956, compiled by Senate Committee on Government Operations, 84th Cong., 2d Sess., p. 252	6
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---

Hearings before the Subcommittee on Rules, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session, pp. 136, 141-142, 261)	22
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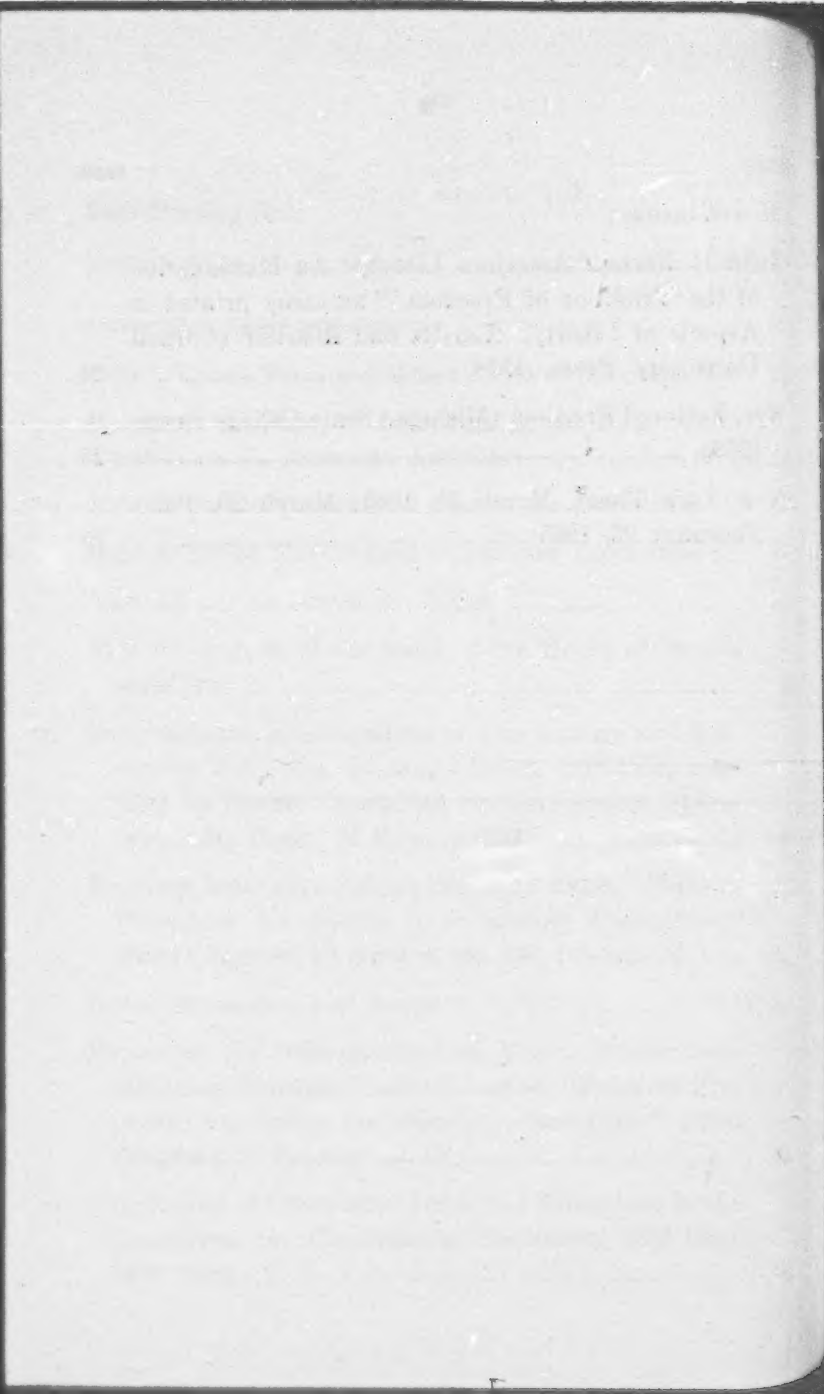
House Resolution 5 of January 5, 1955	5, 17, 20
---------------------------------------------	-----------

Report of the Subcommittee on Rules, Senate Committee on Rules and Administration, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session), p. 15	22
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

Supplement to Cumulative Index to Publications of the Committee on Un-American Activities, 1955-1956, 84th Cong., p. 1	6
------------------------------------------------------------------------------------------------------------------------------	---

Miscellaneous:

John P. Roche, "American Liberty: An Examination of the 'Tradition of Freedom,'" an essay printed in Aspects of Liberty. Konvitz and Rossiter (Cornell University Press, 1958)	24
Nye, Fettered Freedom (Michigan State College Press, 1959)	25
New York Times, March 31, 1965; March 29, 1965; February 26, 1965	29



IN THE
Supreme Court of the United States

OCTOBER TERM, 1965

No.

JOHN T. GOJACK,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

Petitioner prays for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit affirming petitioner's conviction for violating R. S. §102 as amended (2 U. S. C. §192).

Opinions Below

The opinion of the court below which affirmed petitioner's conviction is as yet unreported and appears in Appendix C of this petition. The opinion of the lower court confirming petitioner's first conviction appears at 280 F. 2d 678 (C. A. D. C.), reversed *sub nom. Russell v. United States*, 369 U. S. 749.

Jurisdiction

The judgment of the Court of Appeals was entered on May 27, 1965 (Appendix A, *infra*). A petition for rehearing was denied on July 23, 1965 (Appendix B, *infra*). On July 30, 1965 the time in which to file a petition for writ of certiorari was extended to and including September 21, 1965. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. §1254 (1).

Constitutional and Statutory Provisions and Rules Involved

These are reproduced in Appendix D, *infra*.

Questions Presented

1. Was the indictment in this case insufficient because it failed to specify the authority of the subcommittee of the House Committee on Un-American Activities to conduct the investigation into the subject allegedly under inquiry?
2. Was the conviction invalid because there was no proof at the trial that the subcommittee which interrogated petitioner had authority to conduct the investigation into the subject allegedly under inquiry?
3. Was the conviction invalid because there was no proof that the investigation was authorized by a majority of the full Committee as required by Rule I of the Committee's Rules?
4. Was the subcommittee inquiry in this case an unconstitutional exercise of a non-legislative power to expose individuals and organizations to public criticism and reprisals as an end in itself?

5. Was invasion of petitioner's First Amendment rights and his right to privacy justified by the public interest that would have been served had he answered the questions relating to his political beliefs and associations?

6. Whether, in view of the vagueness of the Committee's authorizing statute and the Committee's announced purpose to expose him and the other circumstances of the case, the pertinence of the questions which petitioner declined to answer in a matter under inquiry was "made to appear with undisputable clarity" within the meaning of *Watkins v. United States*, 354 U. S. 178, 214-215.

7. Was petitioner clearly and timely apprised whether the grounds for his objections to answering the questions put by the subcommittee were accepted or rejected, as required by *Quinn v. United States*, 349 U. S. 155?

8. Whether the statute creating the Committee and defining its power is unconstitutional on its face or as applied in this case in that

(a) it exceeds the legislative power of Congress;

(b) it is too vague and indefinite;

(c) it abridges rights secured by the First Amendment;

(d) it violates the constitutional principle of separation of powers.

9. Whether the entire proceeding resulting in petitioner's conviction is unconstitutional as a Bill of Attainder within the prohibition of Article I, Section 9, Clause 3 of the Constitution.

Statement of the Case

A. The Proceedings Before the Committee

On November 19, 1954, Representative Francis E. Walter announced what the aims of the contemplated House Committee on Un-American Activities (hereinafter referred to as the "Committee") would be when he assumed its chairmanship in January of the next year at the commencement of the 84th Congress (R. 253, 276-279, 247-248):

"Rep. Francis E. Walter (D. Pa.) who will take charge in the new Congress of the House activities against Communists and their sympathizers, has a new plan for driving Reds out of important industries. He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

"‘By this means,’ he said, ‘active communists will be exposed before their neighbors and fellow workers, and I have every confidence that the loyal Americans who work with them will do the rest of the job.’”

• • • • •

"Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend."

"‘We will force these people we know to be Communists to appear by the power of subpoena,’ Rep. Walter said,

'and will demonstrate to their fellow workers that they are part of a foreign conspiracy.'"¹

The Committee was created and activated by House Resolution 5, passed on January 5, 1955 (*Hearings*, p. VI).² On February 9, 1955, the Committee held a meeting, the minutes of which record the following action relevant to this case (R. 12,272; Gov't Ex. 8):

* * * * *

Mr. Scherer moved that David Mates and John Gockack be subpoenaed to appear before a Subcommittee of the Committee on Internal Security [sic] in open hearing at Fort Wayne, Indiana; and that a Dr. Scharfman be subpoenaed to appear in executive session at Fort Wayne, Indiana. The Chairman then designated Mr. Moulder, Mr. Doyle, and Mr. Scherer as a subcommittee to conduct the hearings in Fort Wayne, Indiana, and set the time at February 21, 1955.

* * * * *

The above quoted decision to subpoena petitioner, then an officer of the United Electrical, Radio and Machine Workers of America (UE) (referred to hereinafter as "the Union") before a "subcommittee of the Committee on Internal Security," is the first entry in the Committee's records purportedly dealing with the hearing at which petitioner ultimately appeared (R. 182-183). The February 9 decision to subpoena petitioner without reference to a duly

¹ The Government did not contest the authenticity of this quotation (R. 247-248, 276-279).

² This is a reference to the entire hearings which appear in the record as Government Exhibit 12, reprinted under the title, "Investigation of Communist Activities in the Fort Wayne, Ind. Area."

authorized investigation into a legislative subject matter also scheduled the very first Committee hearings in 1955, following Chairman Walter's announcement of a "new plan" described above, to expose "active Communists" by forcing them "to appear by the power of subpoena."³

While the minutes themselves do not reflect the fact that Congressman Scherer's motion to subpoena petitioner was approved, the record shows that on February 9, 1955, the day of the Committee meeting, a newspaper in Fort Wayne, where the hearings were scheduled to be held, printed a story quoting a statement made by the Chairman that petitioner would be called to testify before the Committee in Fort Wayne (R. 126, 169-170, 178-179). When the announcement was made, the subpoena had not even been issued: the subpoena was issued on February 10 and petitioner was not served until February 15 (R. 174-175).

Because the proceedings might affect the outcome of a National Labor Relations Board election among the employees of the Magnavox Company, scheduled for February 24, in Fort Wayne, many—including petitioner—protested on behalf of the Union (R. 171; *Hearings*, pp. 62-63). Petitioner's protest also charged that, three days before the public announcement of the hearing, Mr. George McClaren, the labor relations director of the Magnavox Company, whose employees were involved in the election, announced to the employees that petitioner would be subpoenaed (*Ibid.*).

³ See *Supplement to Cumulative Index to Publications of the Committee on Un-American Activities, 1955-1956*, 84th Cong., p. 1; *Congressional Investigations of Communism and Subversive Activities, Summary-Index, 1918-1956*, compiled by Senate Committee on Government Operations, 84th Cong., 2d Sess., p. 252.

On February 14, a representative of the Union sought a postponement of the proceedings because of the pendency of the election (R. 156). The Chairman called in the press while this application was being made and announced in the course of a recorded hearing that "all of us are interested in seeing your Union go out of business, because we do not feel it is good for the United States" (R. 158, 164). Further remarks antagonistic to the Union were made by Chairman Walter and by Congressman Moulder, who was also present (R. 153-154, 163-167).

On February 15, a Fort Wayne newspaper printed a boldly-headlined story (R. 281), "House Un-American (sic) Committee Wants UE 'Out of Business'." The story under the by-line of a reporter present at the hearing called by Chairman Walter (R. 151-152), states, "Chairman Francis Walter (D-Pa.) and Rep. Morgan Moulder (D-Mo.), both declared the committee should try to break the hold of the Union on defense plants" (R. 282). Thus an application for adjournment made to protect the Union from the prejudicial impact of the Committee's planned hearings resulted in a further attack on it by the Committee.

On February 18, the hearing was adjourned until February 28 (R. 18-19). On February 22, two days before the election, the Chairman again attacked the Union—this time on the floor of Congress (101 C. R. 1906, 84th Cong. 1st Sess.). He called for the defeat of the Union in the collective bargaining election, complained that telegrams and letters demanding cancellation of the hearings were subversively inspired and stated that the "postponement was agreed to very reluctantly and only after it was feared that false and malicious charges against the committee by the

UE might result in this communist-dominated union continuing as the bargaining agent in this vital defense plant."

On February 23, the Committee discussed the Fort Wayne hearings at a meeting (Gov't Ex. 7; R. 273-275). The minutes of this meeting, which are referred to in the indictment (R. 1), like the minutes of February 9, contain no reference to a proposed subject matter for investigation by the subcommittee but merely record the fact that the hearings had been continued until February 28 (R. 275). There are no other entries of any kind in the Committee's records for the entire year 1955, approving an investigation into the subject matter of the hearings (Rule I, *infra*, p. 42), authorizing the hearings or delegating to the subcommittee a subject matter for investigation. It was conceded at the trial that the minutes of February 9 and 23 constitute the totality of the Committee's entries on the subject of the Fort Wayne hearings (R. 182-183, 261-262).⁴

Since the adjourned hearings were transferred to Washington, a second subpoena was issued on February 23 (R. 19). And again before the issuance of the subpoena, a local newspaper was made aware of its intended issuance as well as the exposure purpose of the hearing. The *St. Joseph Herald-Press*, a newspaper in St. Joseph, Michigan, where the Union functioned as the collective bargaining agent for the employees of the Whirlpool Company, on February 21 printed a statement directly quoting the Committee Chairman, the accuracy of which is uncontested (R. 276-279),

⁴ Rule XI, par. 26 of the Rules of the House of Representatives provides: "(b) Each Committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded."

that the hearing would expose petitioner and another subpoenaed witness as "card carrying Communists" and that, "the rest is up to the community" (R. 283-285). The story under a headline reading in part, "Congressman Out To Prove UE Officials Card-Carrying Commies", went on to point out that "the hearing will precede by three days the N.L.R.B. representative election at Whirlpool". And, again, it directly and accurately (R. 276-279) quoted the Chairman that "all of us [on the Committee] are interested in your Union going out of business because it is not good for the United States" (R. 284-285). At the commencement of the hearings, and before the first witness was sworn, the subcommittee Chairman announced that testimony would be considered (*Hearings*, p. 19) "relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda." The record does not show that petitioner who was the third witness was present when the statement was made.⁵

Before any testimony was received, petitioner's counsel filed a motion, to which were appended the two newspaper accounts referred to above, objecting to the hearings on the following grounds (*Hearings*, p. 20; R. 280-281):

⁵ The Government has pointed to the fact that petitioner objected to certain questions asked of the first witness (*Hearings*, p. 72). But that is hardly proof that he heard Congressman Moulder's statement, especially since the questions to which we referred were asked long after the hearings commenced (R. 129-134). The Government introduced evidence that petitioner was seen conferring with the first witness prior to the opening of the hearing and that he was not observed leaving the hearing. But there was no testimony that he was actually present when Congressman Moulder made his initial statement about the scope of the hearing (R. 139-148).

"1. The committee is not engaged in a legislative investigation for a *bona fide* legislative purpose. This committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The chairman of the committee has previously announced as is shown by the newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack and Jacobs 'to bring out the facts that they are card carrying Communists. The rest is up to the community.'

This purpose is not legislative in character and hence is outside the committee's powers.

"2. If the committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

In any event, the power to inquire into crime is one which is confided exclusively to courts and grand juries under Article I, Section 8 of the Constitution.

"3. The purpose of breaking a union is not one which is authorized by the committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the committee's power.

"6. The Committee intends, as its Chairman has announced, to exact compulsory disclosures of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry."

The motion, filed on behalf of the first three witnesses, including petitioner, was received by the subcommittee with the comment (*Hearings*, p. 20) that "whatever action the Committee desires to take on it, we will take".

Counsel then asked whether the motion would be physically incorporated in the record and was told (*ibid.*) that "we will decide that question after we have examined the motion." Counsel thereupon filed two copies of the motion with the Committee and the first witness, on whose behalf the motion was filed, was thereupon sworn.

When petitioner was sworn he attempted to state orally the gist of the objections filed in the motion (*Hearings*, p. 71) but was interrupted by the Chairman who told him that he was not permitted to "make an opening statement preceding the testimony you are about to give." The witness continued to try to get into the record the grounds of his objections, but was again charged with violating the rules of the Committee. He stated he was merely seeking to explain his position (*ibid.*). Again he was told that he could not state his objections prior to his interrogation (*Hearings*, pp. 71-72). When the witness made a fourth attempt to present to the Committee the substance of the objections contained in the motion he was interrupted by the Chairman and told that his conduct was "not tolerated by the committee" (*Hearings*, p. 72).

After answering a few preliminary questions, the witness tried for a fifth time to present to the Committee the objections which had been presented in the motion (*Hearings*, p. 72): "Before I answer that question I want to explain that this is not a legislative investigation for a bona fide legislative purpose." But he was again rebuked for violating Rule IX of the Committee's rules which requires that copies of prepared or written statements be filed in advance with the Counsel of the Committee (*ibid.*).

Thereafter the witness repeatedly sought to place in the record, in explaining the grounds for his refusal to answer questions, some of the objections which had been advanced in the motion. However, he was systematically interrupted by the Committee members who prevented him from completing his objections (*Hearings*, pp. 72, 84, 86, 87, 106, 109) and who were concerned only with establishing, for purposes of perfecting a contempt case,* that the witness had not pleaded the Fifth Amendment (*ibid.*). After petitioner had declined to answer the questions which gave rise to the indictment, the subcommittee Chairman announced (*Hearings*, p. 155; R. 114), that at the time the motion had been filed, "the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate subpoenas. Therefore, I want the record to show that at that time, *nunc pro tunc*, the objections and the motion to vacate the subpoenas are overruled."

Petitioner was subjected to an unusually comprehensive probe of his life—both public and private. He was asked not only the conventional questions about his politics, but

* At the close of petitioner's testimony, the subcommittee voted to recommend that he be cited for contempt (*Hearings*, p. 156).

about his employment since 1935 (*Hearings*, pp. 73-79), his draft status in World War II (*Hearings*, pp. 81-83) and whether he had falsified a claim to a high school education (*Hearings*, pp. 135-138).

Petitioner responded to most of the questions—about five hundred in number—but declined to answer six questions which gave rise to the indictment, both on First Amendment grounds and on the ground that the purpose of the hearing was an illegal one, exposure (*Hearings*, pp. 84, 86, 89, 102, 103, 104-105). In response to one question, the witness protested that (*Hearings*, p. 135), "I don't think the law under which this Committee operates was set up for exposure purposes. My understanding is that that is what the courts are for, to expose people." Congressman Scherer replied (*ibid.*), "Their job is to judge, not to expose. It is the job of this Committee to expose Communists. That is one of its primary duties, to expose Communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions."

In answer to questions about whether he was a Communist, petitioner pointed to the fact that beginning in 1949 he had signed affidavits, pursuant to Section 9(h) of the Taft-Hartley Act, that he was neither a member of, nor affiliated with the Communist Party and that he neither believed in, was a member of, nor supported any organization dedicated to the overthrow of the United States Government by force or by any illegal or unconstitutional methods (*Hearings*, pp. 84, 88; R. 63-64).

B. Judicial Proceedings

1. The District Court

Petitioner was indicted in December 1955 on a nine-count indictment under the contempt statute. This indictment with its six surviving counts was dismissed by this Court on May 21, 1962, in *Russell v. United States*, 369 U. S. 744, on the ground that it failed to specify the matter under inquiry before the Committee.

Petitioner was reindicted under the contempt statute (Title 2, U. S. C. §192), on September 4, 1962 in a six-count indictment based on refusal to answer the following questions (R. 1-3):

1. Are you now a member of the Communist Party?
2. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.
3. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron appear and address a group of people when you were present?
4. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?
5. Did you take active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?
6. What method was used to get you as an original sponsor? [That is, original sponsor of the American Peace Crusade.]

Petitioner moved to dismiss the indictment on a number of grounds, including its failure to state facts constituting an offense against the United States and the fact that it was not found by a sufficient number of qualified and unbiased grand jurors. Petitioner also moved separately for a preliminary hearing on the qualifications of the grand jurors who indicted him (R. 4-9). The motions were denied (R. 10).

The Government supplemented the record of the first trial with documents (Gov't Exs. 5 and 7; R. 270-275) dealing exhaustively with the Committee's internal consideration of the hearings. Certain materials in support of petitioner's contentions that the hearing was conducted to expose and injure petitioner (J. A. 196-254), which had been excluded from evidence at the first trial, were admitted at the second trial when the Government withdrew its objections. Also admitted was expert testimony (R. 254-260, 277; see record in *Silber v. United States*, 370 U. S. 717, pp. 94-96, 97-118) in support of petitioner's contention that the individual and public interests involved in protecting the rights of free speech and assembly and the right of privacy outweighed the public interest in securing answers to the questions put to him.

Frank Tavenner, the Committee's counsel and the Government's principal witness, testified that in 1951 the Committee had heard testimony that the entire Union was saturated with Communists (R. 20-21). He also testified that in July 1953, another witness offered the information that a group of Union organizers (in a District other than petitioner's) were Communists (R. 21-22). No testimony was adduced that the Committee had information that petitioner was a "card carrying Communist," to use Chairman Walter's words, or any other kind of Communist.

Mr. Tavenner further testified (R. 26-27) that in 1947 Aron and Johnson (Indictment, Counts 2 and 3) had been identified as Communists before the Committee. But no testimony was adduced that the Committee had any basis for linking petitioner politically with these individuals. Similar testimony was presented that the individual (Russell Nixon) referred to in Count 4 had been identified as a Communist (R. 38-39). The Government further showed that petitioner—together with other Vice-Presidents of the Union—received a letter from Nixon with an enclosure of a document calling for peace addressed to the Union, from the Metal Workers of Paris (R. 40-53). Finally, the Committee adduced evidence that the American Peace Crusade had, in 1951, been cited—by the Committee itself—as a “front organization” (R. 27-28), and that petitioner was one of its sponsors (R. 30-31).

Petitioner introduced evidence to show that he had been called for the purpose of exposure only; that exposure was reflected in the Committee's activities through the years, and that it was the characteristic way in which the Committee exercised its jurisdiction (R. 184-245). It was stipulated that, for every year prior to the hearing since 1949, petitioner had filed non-Communist affidavits stating under oath the disclaimer referred to above (R. 63-64).

Petitioner also introduced evidence that Labor Relations Director McClaren of the Magnavox Company had, during the period when the Union had been the collective bargaining agent for the Company's employees, obtained from the Committee material contained in petitioner's dossier while he was an official of the Union, and had circulated it among the employees (R. 184-196, 287-295).

The trial court in upholding the indictment against petitioner's claim that it lacked a specification of the subcom-

mittee's authorization to investigate the matter alleged to be under inquiry, ruled (R. 149) that its mandate was adequately spelled out (1) by the fact that the Legislative Reorganization Act and House Resolution 5 (both referred to in the indictment) vest the authority of full Committee in its subcommittees; (2) by the recital of the authorization to subpoena petitioner and (3) by the particularization of the matter under inquiry as announced by Chairman Moulder at the hearing.

It found in the minutes of the Committee meetings, referred to above, evidence that the full Committee had complied with its Rule I, which requires approval of an investigation by a majority of the Committee (R. 150). It concluded that the hearing had a legislative purpose and that the interest in requiring petitioner to respond to the questions outweighed the interest in free speech and privacy (R. 263-266). Petitioner was adjudged guilty and sentenced to three months' imprisonment and fined \$200 (R. 11).

2. *The Court of Appeals*

The Court of Appeals affirmed the conviction in a *per curiam* opinion (Appendix C) which specifically rejected some of petitioner's contentions and ignored the rest. The court ruled that there was "one serious question presented by this record" (*infra* p. 36), the failure of the subcommittee to make a timely ruling on the objections which petitioner had urged at the commencement of the hearings. However, the court ruled that it was "not disposed to consider the matter" in view of the fact that it had not been urged as a ground for reversal although it had been referred to in another related action. The concurring judge found no merit in the majority's reservations. The petition for rehearing squarely raising the issue adverted to by the court below was denied.

Reasons for Granting the Writ

1. The precise issue presented here—whether an indictment for contempt under Title 2, Section 192 in connection with a hearing involving the Committee must allege the authority of the panel delegated to conduct the investigation—was carefully weighed by the Court of Appeals for the Second Circuit in *United States v. Seeger*, 303 F. 2d 478. The court applied the requirement of the Sixth Amendment that the accused “be informed of the nature and cause of the accusation” and ruled that a conviction for violation of Title 2, Section 192 cannot be sustained unless it appears from the indictment that the subcommittee was duly empowered to conduct the investigation and that the inquiry was within the scope and the grant of authority.

In that case, in contrast to and in direct conflict with this one, the indictment did recite the fact that the full committee had “directed that an investigation be conducted of Communist infiltration in the field of entertainment in New York.” 303 F. 2d, fn. 5 at p. 481. The court nevertheless adopted the defendant’s contention and held that “the indictment was defective because it had failed to properly allege the authority of the subcommittee to conduct the hearings in issue and to set forth the basis of that authority accurately” (*supra*, at p. 481). To the same effect see *United States v. Lamont*, 236 F. 2d 312 (C. A. 2), affirming 18 F. R. D. 34 (S. D. N. Y.).

Moreover the *Russell* case, 369 U. S. 749, requires a statement of the authorized mission of the subcommittee. The *Russell* case ruled that the subject under inquiry must be set forth in the indictment to permit a determination of pertinency. The instant indictment’s reference to a subject under inquiry is to the announcement made by the sub-

committee Chairman Moulder at the commencement of the hearings (*supra*, p. 9). But such an announcement is hardly an authoritative statement of the subcommittee's delegation of authority. Congressman Moulder's statement may perhaps have reflected a Committee authorization, or it may have been an improvisation. The questions propounded at the hearing may have been pertinent to the announced subject-matter but not to the subcommittee's authorization. The *Russell* case obviously requires that the indictment enlighten the defendant and the court not merely as to the matter under inquiry as announced at the hearing, but also as to the matter confided to the subcommittee in the first place. The former allegation might be adequate to frame the pertinency issue in the due process sense, but an allegation of the subcommittee's authorized mission is indispensable to a resolution of the issue of statutory pertinency.⁷ Cf. *Deutch v. United States*, 367 U. S. 456, 468; *Watkins v. United States*, 354 U. S. 178, 204; see also *United States v. Lamont*, 18 F. R. D., *supra* (at p. 35); also *Sacher v. United States*, 356 U. S. 576, 577, and *United States v. Orman*, 207 F. 2d 148, 153 (C. A. 3).

Quite apart from questions of jurisdiction and pertinency, allegations of subcommittee authority are necessary to permit an initial determination as to whether, in a hearing such as this of more restricted scope than the authorizing resolution, the authority exercised by the subcommittee conforms with the authority delegated to it. Just as full "committees are restricted to the missions dele-

⁷ We think it significant that all the indictments referred to in the *Russell* case, *supra*, at 754, footnote 7, which specify a matter under inquiry set forth the matter under inquiry as delegated by the full Committee. And the indictments in the post-*Russell*, *Silver* and *Grumman* cases in the District of Columbia Circuit (Criminal Nos. 822-62, 823-62, September 4, 1962 grand jury) also specify the subcommittee's mandate.

gated to them" (*Watkins v. United States, supra*, at p. 206), so subcommittees are restricted to their delegated authority.

The authorization for the investigation recited in the indictment is the Committee's charter (H. Res. 5 of January 5, 1955) which this Court has held (*Watkins, supra*, at 205) is too broad and vague to satisfy the demands for precision made by the First Amendment. It should not be necessary for a defendant or a court to guess or assume that the full Committee has authoritatively glossed its resolution (compare *Barenblatt v. United States*, 360 U. S. 109, 121) so as to cure its infirmities.*

* At least since the *Watkins* case the Committee's subcommittees routinely recite their delegated authority to probe the subjects under inquiry. See, for example, the opening statements made by the Chairmen in the following hearings held from the 85th to the 88th Congress:

Investigation of Communist Activities in the Buffalo, N. Y., Area—Part I, October 2, 1957;

Investigation of Communist Penetration of Communications Facilities—Part 1, July 17, 1957;

Investigation of Communism in the Metropolitan Music School, Inc., and Related Fields—Part 1, April 9, 1957;

Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area), Monday, February 10, 1958;

Investigation of Communist Activities in the New England Area—Part 1, Tuesday, March 18, 1958;

Communist Infiltration and Activities in Newark, N. J., September 3, 1958;

Passport Security—Part 1 (Testimony of Harry R. Bridges), April 21, 1959;

Communist Infiltration of Vital Industries and Current Communist Techniques in the Chicago, Ill., Area, May 5, 1959;

Western Section of the Southern California District of the Communist Party, Part 1, October 20, 1959;

Communist Outlets for the Distribution of Soviet Propaganda in the United States, Part 1, May 9, 1962;

Communist Activities in the Peace Movement, December 11, 1962;

Assistance to Foreign Communist Governments, March 6, 1963.

2. A separate and distinct conflict with *Seeger* also requires review of the failure here to prove the subcommittee's delegation at the trial. See *Seeger, supra*, at p. 487 (concurring opinion). The omission of the subcommittee's delegated authority in the present indictment, after this court dismissed the first indictment of petitioner for failure to allege the subject under inquiry (*Russell v. United States, supra*) was not the result of choice or accident² but was dictated by lack of evidence of the delegation. The trial record shows proof only of the Committee's and subcommittee's general power as conferred by the House resolution to investigate the broad areas described in the resolution but not the subcommittee's authorization to investigate the limited subject it claimed it was investigating. Even if the indictment was adequate, the proof was fatally defective. It is the authorization by the full Committee which defines the authority of the subcommittee and establishes the legislative purpose of the hearing by deciding that an inquiry would aid Congress in the performance of its legislative function. A contempt is not committed unless the proper authority of the subcommittee is established by proof not available here. *Seeger, supra*, at 487.

3. The Court has noted that especially in investigations touching on beliefs, expressions or associations "procedures which prevent the separation of power from responsibility" cannot be lightly disregarded. *Watkins v. United States*, 354 U. S. 178, 197, 215.

Rule I of the Committee's rules (*infra*, p. 42) is one of those rules of congressional committees which seek to

² The grand jury which indicted petitioner (R. 1) returned indictments in the *Grumman* and *Silber* cases which did specify the delegated authority of the subcommittee. See note 7, *supra*.

join power and responsibility.^{9a} It requires that before an investigation is undertaken, a majority of the Committee, in this case, five members, must approve. Here there is not an iota of evidence to show compliance with the rule. Nor could prior approval be inferred from what occurred afterwards. The witness has a right to have the full committee responsibly determine in advance whether or not to conduct the investigation. Compare *Yellin v. United States*, 374 U. S. 109, 124.

The failure of the Committee to conform to its own rules is an issue which requires review especially since the rule involved is such an important bulwark against abuse of investigative power. Moreover, the opportunity afforded the Court to give guidance in this area is unusually favorable because this issue relates in important respects to the delegation issues already discussed.

4. The defects in the indictment and proof¹⁰ and the non-compliance with Rule I of the Committee, referred to above, eliminate the basis for any claim that the hearing had a legislative purpose. In addition there is a unique and, we submit, highly impressive affirmative chain of proof

^{9a} Compare Rule I, Senate Government Operations Committee; Rule 8 House Government Operations Committee; Rule 1 House Ways and Means Revenue Subcommittee. See also report of the Subcommittee on Rules, Senate Committee on Rules and Administration, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session) p. 15; Hearings before the Subcommittee on Rules, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session, pp. 136, 141-142, 261) (testimony of Harold H. Velde) and 291 (testimony of Robert Kunzig).

¹⁰ See *United States v. Lamont*, 18 F. R. D. 34 at 36:

"Nor is it an answer to suggest that a presumption of regularity supports the committee's purported authority to act since that presumption presupposes a prior grant of authority."

that the purpose of the hearing was to expose and injure petitioner and the Union.

This was the first hearing conducted pursuant to a new plan to engage in bigger and better exposure hearings with a view to stimulating community reprisals. The entire record shows how this plan was executed. Petitioner was subpoenaed twice—his first hearing was postponed. Information was leaked to the local press in two different communities before the subpoenas were issued announcing that they would be issued. The Personnel Manager of the plant in which petitioner's Union was faced with an election was able to announce three days before the issuance of the subpoena that a subpoena would be issued. Chairman Walter expressly told one local newspaper in advance of the hearings that the Committee would demonstrate that petitioner was a "card-carrying Communist" and that "the rest" would be "up to the community." Both newspapers quoted the Chairman's statement that the Committee was interested in breaking petitioner's Union, an objective which was reiterated by the Chairman on the floor of Congress.

The subcommittee which presided over petitioner's hearing was informed of the Chairman's announcements and actions, but did not disavow them. The exposure purpose thus revealed in the entire record is reinforced by the fact that the Committee produced no evidence to support its advance claim that the petitioner was a "card carrying Communist."

The court below in rejecting our exposure contention relied on this Court's decision in *Barenblatt v. United States, supra*. It seems to us that the court below has erroneously construed *Barenblatt* to erect an impregnable wall of immunity from challenge on exposure grounds. At least where investigation of Communism is involved the pre-

sumption of legislative purpose appears to be, under the lower Court's view of *Barenblatt*, irrebuttable.

If this Court's strictures¹¹ against exposure for exposure's sake are not to be reduced to empty verbalism, then the ruling below that this was not an exposure hearing must be reviewed. The presumption which normally shelters a legislative enterprise was overcome, as we have seen, in the very cradle of this "investigation". And whatever force it retained was rebutted by the uncontradicted facts. Compare *United States v. Cross*, 170 Fed. Supp. 303, 309-310 (D. D. C.). If petitioner's showing in this case falls short of what is required, then we doubt whether an exposure purpose can be shown in any case, or indeed whether the purpose of the Committee can be viewed as a question of fact at all. There is present here the evidence "that the Subcommittee was attempting to pillory witnesses" found to be lacking in *Barenblatt* (360 U. S. at 134); cf. *Braden v. United States*, 365 U. S. 431; *Wilkinson v. United States*, 365 U. S. 399.

5. This is a conviction for the exercise of First Amendment rights.¹² However, under the *Barenblatt* case, the vindication of those rights depends upon a balancing of "the

¹¹ *Watkins v. United States*, *supra*, at 187, 200; *Quinn v. United States*, 349 U. S. 155, 160-161; *Barenblatt v. United States*, 360 U. S. 109, 133.

¹² The enforced disclosure of affiliation and association is no insignificant or minor rupture in the fabric of our freedoms. The matrix of our entire system for protecting dissent is embedded in the anonymity which an impersonal urbanized culture has made possible. The individual's right to dissent was but an abstraction in a pre-industrialized culture when each man was at the mercy of his neighbor's prejudices. As John P. Roche put it in "American Liberty: An Examination of the 'Tradition of Freedom,' an essay printed in *Aspects of Liberty*, Konvitz and Rossiter (Cornell University Press, 1958) "In a very real sense the very impersonalization of urban life is a condition of freedom; it is quite possible

competing private and public interests at stake in the particular circumstances shown." 360 U. S. at 126. In this case, as in *N. A. A. C. P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516, and *Gibson v. Florida*, 372 U. S. 539, the "circumstances shown" do not warrant a sacrifice of petitioner's First Amendment freedoms.

Apart from the facts that (1) there was a dubious legislative purpose for the hearings; (2) the Committee already had detailed information in its files about petitioner; and (3) petitioner for the five years prior to the date of his appearance had filed non-Communist affidavits pursuant to the Taft-Hartley Act (*supra*, p. 13), a detailed analysis of the other competing interests involved has led an expert, Professor Thomas I. Emerson of the Yale Law School, to the conclusion that, under circumstances comparable to those present here (*supra*, p. 15):

"the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interests of the individual in freedom of speech or silence, as he may prefer, and by the interests of the community in maintaining freedom of political expression and other conditions essential to maintaining an open society."

Invasion of the First Amendment rights of Committee witnesses has come to be mechanically justified on the

to live differently and believe differently from one's neighbors without their knowing, much less caring, about the deviation." See Nye, *Fettered Freedom* (Michigan State College Press (1959)) for an account of liberty in America in the pre-industrial era.

The goal of the Committee's exposure system—and its counterparts—is nothing more or less than the restoration of the social and economic controls which gave dissent no quarter.

grounds of national security in every investigation involving Communism. But the facts upon which such justifications are based are stale and require authoritative re-evaluation. It is simply a myth that our security is under a threat of internal subversion of such menacing proportions as to require the continuing curtailment of our freedoms for the indefinite future. The fact is that the power of Communism in the United States is now and has for some time been at an extremely low ebb. See Emerson testimony, *supra*. Nor can it be convincingly argued that there is a foreign threat which justifies curtailment of domestic freedoms. The collapse of the myth of a monolithic Communist world, the emergence of polycentrism, the rivalry of the Soviet and Chinese systems and the development of mutually shared goals of co-existence between the United States and the Soviet Union—all of these circumstances condemn as unreal the justifications for restraints on our basic freedoms which have hitherto been advanced. Even in the case of commercial regulations the Court evaluates the reasonableness of a restraint in the light of changed circumstances.¹³ Where political freedom is involved we submit it has a duty to do so.

6. This case warrants review because petitioner was denied the protections of *Watkins v. United States*, 354 U. S. 178, 208-209. Petitioner had excellent ground for believing that the purpose of the Committee, as announced by the Chairman, was to expose him and to break his Union. He indeed filed objections with the Committee, protesting these announced purposes. His objections thus did not reflect an awareness of a contemplated legitimate subject

¹³ Compare *Block v. Hirsh*, 256 U. S. 135 with *Chastleton v. Sinclair*, 264 U. S. 543, 547-8 and *Noble State Bank v. Haskell*, 219 U. S. 104 with *Abie State Bank v. Weaver*, 282 U. S. 675, 772.

under inquiry. He had a right to assume that all of the questions would be pertinent to himself and to an attempt to injure him and his Union rather than to any other subject.

We think that the motion which petitioner filed at the outset of the hearing "triggered" the Committee's responsibility to set out clearly the claimed subject under inquiry. The Committee evidently thought so too for it denied the motion at the end of the hearing, "*nunc pro tunc*." But this delayed action hardly could cure the failure of the Committee to conform to the requirements of *Watkins*. Nor did the Chairman's announcement at the beginning of the hearing effectively inform petitioner of the matter under inquiry. There is no showing at all in the record that petitioner was present when the announcement was made. It is true his counsel also was counsel for the first witness, but we think that the *Watkins* rule requires that the subject matter of the hearing and its pertinency be communicated to the witness and not to his counsel acting as counsel for another witness.

7. Moreover, the sub-Committee was required to overrule petitioner's objections, as stated in his motion, prior to the time he was forced to give testimony and to apprise him that it had overruled these objections, and to require him to proceed. *Quinn v. United States*, 349 U. S. 155; *Emspak v. United States*, 349 U. S. 190; *Bart v. United States*, 349 U. S. 219; and *Flaxer v. United States*, 358 U. S. 147.

The objections were manifestly not frivolous; they were presented in documented fashion and called for some response by the Committee. Not only did the Committee fail

to overrule the objections in the motion, but it prevented the witness from presenting them orally (*supra*, pp. 11-12).

Nor did the Committee's direction to answer specific questions adequately discharge its responsibility, as defined by this Court. The Committee had made it clear (as in the *Bart* case, *supra*), at 233, that it had no intention of ruling on the objections in the motion and petitioner had no way of knowing whether these grounds for his refusal had been considered and rejected. Besides, objections made by the witness to specific questions here were not co-extensive with the grounds urged in the motion. Since the subcommittee was required to communicate to the witness its response to *all* of his objections the fact that it directed him to answer after hearing some of them is no defense to our contention.

Thus, of the six grounds presented in the motion, only two were urged in response to the Count 1 question (*Hearings*, pp. 86-87; R. 74-76); two, in response to the Count 2 question (*Hearings*, pp. 102-104; R. 91-92); one to the Count 3 question (*Hearings*, pp. 106-107; R. 94); one to the Count 4 question (*Hearings*, p. 134; R. 102-3); one to the Count 5 question (*Hearings*, p. 145; R. 104); and "for the reasons previously stated" to the Count 6 question (*Hearings*, pp. 149-150; R. 108-109).

As the Court below noted, this is a "serious question" (*infra*, p. 36) and it warrants review.¹⁴

8. Contentions repeatedly submitted to the courts challenging the Committee's mandate as violative of the First Amendment must also be reconsidered in the light of

¹⁴ The issue was suggested on the appeal but not explicitly raised until the petition for rehearing was filed. Compare *Silber v. United States*, 370 U. S. 717.

changed circumstances. What might have been constitutionally permissible in a Congressional enactment construed and applied in a time of political tension (compare *Ex parte Endo*, 323 U. S. 283 with *Harabayashi v. United States*, 320 U. S. 81) may not, in a calmer time, meet the strict requirements of the First Amendment. In *Barenblatt, supra*, this Court ruled that the Committee's resolution was not too vague to meet First Amendment standards. But the Committee itself is not sure what its resolution means. Thus, it was only after long hesitation and considerable reservation and doubt as to its authority that it decided to undertake a probe of the Ku Klux Klan.¹⁵ As recently as 1961, the late Chairman Walter stated that the activities of such organizations are excluded from the Committee's jurisdiction.¹⁶

¹⁵ The investigation of the Ku Klux Klan was demanded by the Committee member Weltner on February 1, 1965. See 111 Cong. Rec. 1592 Feb. 1, 1965 (Daily Edition). On March 30th, 1965, after a prolonged preliminary inquiry, an investigation of the Klan was approved by the Committee. The debate on the resolution authorizing the investigation appears at 111 Cong. Rec., pp. 7740, 7750, April 14, 1965 (Daily Edition). See, also, New York Times, March 31, 1965; March 29th, 1965; February 26, 1965.

¹⁶ In a telecast ("Youth Wants to Know") on January 28, 1961, Walter gave an interrogator the following account of the limitations on the Committee's jurisdiction:

"Question: Sir, for our own information, could you tell us just what is considered un-American, by your Committee?"

"Representative Walter: Well, any activity that strikes at the basic concept of our Republic.

"Question: Sir, don't you agree that such subversive organizations as the American Nazi Party and Ku Klux Klan constitute a threat to the liberties of Americans?"

"Representative Walter: I don't think so. Actually, they haven't engaged in any activity on behalf of a foreign power and that, of course, is the big difference.

"Question: But, sir, don't you believe that the suppression of minorities is against the Constitution of the United States?"

"Representative Walter: Of course, it is, but it is not within the jurisdiction of the Committee on Un-American Activities

Moreover, it seems to us that the ruling in *Barenblatt*, on vagueness of the Committee's mandate had been severely undermined by *Baggett v. Bullitt*, 377 U. S. 360 and *Domkowski v. Pfister*, 380 U. S. 479.

9. The entire Committee proceeding against petitioner, culminating in his conviction, constituted an attempted non-judicial punishment of petitioner by an adjudication of a sort and by exposure to public hatred and economic and social retaliation which is prohibited as a Bill of Attainder by Article I, Section 9, Clause 3 of the Constitution. *United States v. Brown*, 381 U. S. 437; *United States v. Lovett*, 328 U. S. 303; *Barenblatt*, *supra* (dissenting opinions).

CONCLUSION

For the foregoing reasons, it is prayed that the petition for a writ of certiorari be granted.

Respectfully submitted,

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to make inquiries into that field. Our inquiries are limited by the statute creating the Committee, and this, of course, is Communism and Communist activity."

APPENDIX A

Filed May 27, 1965

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,348

September Term, 1964.

Criminal 821-62

JOHN T. GOJACK,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

**Appeal from the United States District Court
for the District of Columbia**

Before:

**BAZELON, Chief Judge, and
BURGER and WRIGHT, Circuit Judges.**

JUDGMENT

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam.

Dated: May 27 1965

Separate opinion by Circuit Judge Burger concurring in the result.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,348

September Term, 1964

Crim. No. 821-62

JOHN T. GOJACK,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

Before:

BAZELON, Chief Judge,

BURGER and WRIGHT, Circuit Judges, in Chambers.

ORDER

On consideration of appellant's petition for rehearing,
it is

ORDERED by the court that the aforesaid petition is denied.

Per Curiam.

Dated: Jul. 23, 1965

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18348

JOHN T. GOJACK,*Appellant,*

—v.—

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court
for the District of Columbia

Decided May 27, 1965

Mr. Frank J. Donner of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. Robert L. Keuch, Attorney, Department of Justice, with whom *Assistant Attorney General Yeagley*, *Messrs. David C. Acheson*, United States Attorney, and *Kevin T. Maroney*, Attorney, Department of Justice, were on the brief, for appellee. *Mr. Frank Q. Nebeker*, Assistant United States Attorney, also entered an appearance for appellee.

Before:

BAZELON, *Chief Judge*, and
BURGER and WRIGHT, *Circuit Judges*.

PER CURIAM: On February 28 and March 1, 1955, appellant testified at a subcommittee hearing of the House of Rep-

representatives Committee on Un-American Activities. At that hearing he refused to answer certain questions, for which he was convicted for contempt of Congress.¹ That conviction was reversed by the Supreme Court for insufficiency of the indictment.² Appellant was then convicted on a new indictment, which alleged refusal to answer six questions asked by the subcommittee.³ This appeal followed.

Appellant argues that the subcommittee had no proper legislative purpose and that he was not adequately informed by the subcommittee of the legislative pertinency of its questions. These arguments are foreclosed by *Bar-enblatt v. United States*, 360 U.S. 109 (1959). Appellant further contends that the indictment was insufficient because it did not specifically recite the subcommittee's au-

¹ 2 U.S.C. §192.

² *Sub nom. Russell v. United States*, 369 U.S. 749 (1962).

³ The questions were:

"1. On February 28, 1955. Question: Are you now a member of the Communist Party?"

"2. On March 1, 1955. Question: You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.

"3. On March 1, 1955. Question: Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?"

"4. On March 1, 1955. Question: May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?"

"5. On March 1, 1955. Question: Did you take active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade?"

"6. On March 1, 1955. Question: What method was used to get you as an original sponsor? [That is, original sponsor of the American Peace Crusade.]"

thority to conduct the investigation here, and that there was no adequate proof at trial of the subcommittee's authority. We find no merit in these contentions.

There is one serious question presented by this record which appellant has not alleged as grounds for reversal. At the beginning of the February 28 hearing, appellant's counsel submitted a written motion to the subcommittee contesting its jurisdiction to question appellant.* At that time, the subcommittee chairman stated, "You may

* "John Thomas Gojack, . . . having been subpoenaed by the House Committee on Un-American Activities for appearance at a hearing on February 28, 1955, respectfully move[s] to vacate the said subpoenas and to set aside the hearing on the following grounds:

"1. The Committee is not engaged in a legislative investigation for a bona fide legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack, . . . 'to bring out the facts that they are card carrying Communists. The rest is up to the community'.

"2. If the Committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

"In any event, the power to inquire into crime is one which is confided exclusively to courts and grand juries under Article I Section 3 of the Constitution.

"3. The purpose of breaking a union, is not one which is authorized by the Committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the Committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The Committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

(footnote continued)

file the motion; and then whatever action the committee desires to take upon it, we will take." No explicit ruling was made on this motion until the conclusion of the March 1 hearing, when the chairman stated:

[A]t the beginning of the hearings, counsel for John T. Gojack . . . filed a statement of objections to hearing and a motion to vacate the subpoenas. At that time the members of the subcommittee unanimously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, nunc pro tunc, the objections and motion to vacate subpoenas are overruled.

This ruling was made after appellant's refusal to answer the questions for which he was here convicted.⁵

Although the subcommittee did specifically direct appellant to answer the questions at issue, its failure specifically to overrule appellant's motion may have left ambiguous whether the subcommittee had considered the objections raised in appellant's motion or whether it was ignorant of them before it directed an answer. "[A] clear disposition of the witness' objection is a prerequisite to prosecution for contempt" *Quinn v. United States*, 349 U.S. 155, 167 (1955). The subcommittee must "advise the witness of [its] position as to his objections . . . [to give him] a clear choice between standing on his objection and com-

⁶ "6. The Committee intends, as its chairman has announced, to exact compulsory disclosure of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry."

⁵ After this ruling, appellant refused to answer several questions. He was not indicted for those refusals. Compare *Flaxer v. United States*, 358 U.S. 147 (1958).

pliance with a committee ruling." *Bart v. United States*, 349 U.S. 219, 223 (1955).*

On the previous appeal, this court ruled, "That [appellant's motion] was in fact denied is clear from the fact that [appellant was] . . . called, sworn and queried."† It is not clear whether we are bound by that ruling. But since appellant's experienced counsel does not challenge that ruling on this appeal,* we are not disposed to consider the matter.

The judgment of the District Court is

Affirmed.

BURGER, *Circuit Judge, concurring in the result*: I cannot agree that the issue concerning denial of Appellant's motion to the Committee is open. The point was not raised to the Committee; it was not raised in the District Court; it was not raised in this court.

The orderly and efficient administration of the business of the courts ought to preclude—and I think it does preclude—a litigant from ignoring a point which is obvious even though not valid only to have it raised sua sponte by a member of the reviewing court.

* During his testimony, appellant attempted repeatedly to state his objections and he was repeatedly interrupted by subcommittee members on the ground that he was "proceeding again to read that prepared statement." The basis for these interruptions was apparently the Committee's rule that "a prepared or written statement" can be read into the record only upon Committee approval at the conclusion of a witness' testimony. The effect of the interruptions may have been, however, to deprive appellant of any opportunity to determine whether the subcommittee was aware of the basis for his objections and whether it overruled those objections.

† 108 U. S. App. D. C. 130, 138, 280 F. 2d 678, 685 (1960).

* Appellant's brief, at p. 52, does refer to the "retroactive rejection" of his motion, but only to support his argument that the subcommittee did not adequately advise him of the legislative pertinency of its questions.

That the point discussed by the court has no merit is shown by our own holdings that a ruling may be implicit in the conduct of a tribunal. Judge Wright pointed this out in *Cooper v. United States*, — U.S.App.D.C. —, —, 337 F.2d 538, 539 (1964), where he articulated the reasons underlying the summary affirmance of the conviction where the District Court proceeded to trial without entering an order or formally ruling on the Defendant's competence to stand trial. "The court did not in terms hold that Cooper was competent. But its ruling to this effect is clear from its actions [in proceeding to trial]."

Appellant here moved to vacate the subpoena and "set aside" the hearing. His objection went to the fact of any questioning at all. To suggest that continuance of the hearing did not dispose of Appellant's motion by denying it is to ignore the realities of the situation. Nor is the rule of the *Quinn* and *Bart* cases, cited by the court, to the contrary. Those cases significantly did not involve express directions to answer such as Gojack here received. See 349 U. S. at 222. Moreover, we expressly held the *Quinn* rule unavailable to Appellant on his former appeal. *Gojack v. United States*, 108 U.S.App.D.C. 130, 139, 280 F.2d 678, 687 (1960).

For these reasons I am bound to express my disagreement with the court's discussion of this point.

APPENDIX D

Constitutional and Statutory Provisions and Rules Involved

The First Amendment to the Constitution of the United States provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Fifth Amendment to the Constitution of the United States provides:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.”

The Sixth Amendment provides:

“In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the prosecution; * * * ”

2 U.S.C. Sec. 192, R.S. 102 (52 Stat. 942), as amended, provides:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee, established by a joint or concurrent resolution of the two Houses of Congress, wilfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 812, 823, 828) and House Resolution 5 (84th Congress) provide in pertinent part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"Power & Duties of Committees

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees respectively. . . .

• • • • •

"(q) (1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittees, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda

activities in the United States, (ii) the diffusion within the United States of subversive and American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7 (c) F.R. Cr. Proc. provides in pertinent part as follows:

"The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count."

Rule I of the Rules of Procedure of the House Committee on Un-American Activities provides in pertinent part:

"No major investigation shall be initiated without approval of a majority of the Committee."

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes and rules involved	2
Statement	3
Argument	14
Conclusion	26

CITATIONS

Cases:

<i>American Communications Assn. v. Douds</i> , 339 U.S. 382	16
<i>Barenblatt v. United States</i> , 360 U.S. 109..15, 17, 18, 22, 24	22, 24
<i>Bart v. United States</i> , 349 U.S. 219	25
<i>Braden v. United States</i> , 365 U.S. 431	15, 18
<i>Deutch v. United States</i> , 367 U.S. 456.....	22
<i>Gibson v. Florida Legislative Commission</i> , 372 U.S. 539	15
<i>Gojack v. United States</i> , 280 F. 2d 678, reversed sub nom. <i>Russell v. United States</i> , 369 U.S. 749..	3
<i>Quinn v. United States</i> , 349 U.S. 155	25
<i>Russell v. United States</i> , 369 U.S. 749	1, 3, 14, 18
<i>Sacher v. United States</i> , 252 F. 2d 828, reversed 356 U.S. 576	18
<i>Seeger v. United States</i> , 303 F. 2d 478	18, 20, 21
<i>Shelton v. United States</i> , 280 F. 2d 701, reversed sub nom. <i>Russell v. United States</i> , 369 U.S. 739..	18
<i>United States v. Lamont</i> , 236 F. 2d 312	18, 20
<i>Watkins v. United States</i> , 354 U.S. 178.....	17, 23
<i>Wilkinson v. United States</i> , 365 U.S. 399.....	15, 18

II

Constitution, statute, resolution and rules:	Page
U. S. Constitution:	
Article I, Sec. 3	8
First Amendment	9, 15
Legislative Reorganization Act of 1946, 60 Stat.	
828	19
2 U.S.C. 192	2, 3
House Resolution 5, 84th Congress	19
Federal Rules of Criminal Procedure, Rule 7(c)	3
Rule I of the Rules of Procedure of the House Committee on Un-American Activities	3
Rule XI of the Rules of the House of Representa- tives	2

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals on the judgment under review (Pet. App. A) is reported at 348 F.2d 355. The first opinion of the court of appeals is reported at 280 F.2d 678, and the opinion of this Court reversing the court of appeals' first decision is reported *sub nom. Russell v. United States* at 369 U.S. 749.

JURISDICTION

The judgment of the court of appeals (Pet. App. A, pp. 31-32) was entered on May 27, 1965, and the court denied a petition for rehearing on July 23, 1965 (Pet. App. B, p. 33). On July 30, 1965, Mr. Justice White extended the time in which to file a petition for a writ of certiorari to and including September 21, 1965, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1245(1).

QUESTIONS PRESENTED

1. Whether the House Un-American Activities Committee has the power to investigate Communist activities.

2. Whether the indictment was sufficient.

3. Whether the Committee (a) authorized the investigation and (b) delegated authority to conduct it to the subcommittee before which petitioner appeared.

4. Whether petitioner was adequately apprised of the pertinency of the questions that he refused to answer.

5. Whether he was adequately apprised that the subcommittee had rejected his objections to answering the questions.

STATUTES AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, Rule 7(c)

of the Federal Rules of Criminal Procedure and Rule I of the Rules of Procedure of the House Committee on Un-American Activities appear as Appendix D to the petition for certiorari.

STATEMENT

Petitioner was charged in a six-count indictment with having refused to answer six questions pertinent to matters under inquiry by the Committee on Un-American Activities of the House of Representatives, in violation of 2 U.S.C. 192 (R. 1-3). He waived his right to trial by jury, and was found guilty on all counts. A general sentence of three months' imprisonment plus a \$200 fine was imposed (R. 11). Petitioner had been charged with the same offense in an indictment returned in December 1955. Upon trial of that indictment, he had been convicted and the convictions affirmed by the court of appeals. *Gojack v. United States*, 280 F.2d 678. But this Court had reversed his conviction (along with the convictions in five other contempt of Congress cases) on the ground that the indictments were defective. *Russell v. United States*, 369 U.S. 749. Petitioner was then reindicted.

The pertinent facts may be summarized as follows:

As part of a continuing investigation into Communist activities in the labor field, including infiltration into labor organizations and dissemination of Communist labor propaganda, the Committee had been engaged intermittently in investigating alleged Com-

munist Party activities by officials of the United Electrical, Radio and Machine Workers of America (U.E.) from August 1949 until February 1955 when petitioner appeared before the Committee (Gov't Ex. 11, Gov't Ex. 13; R. 20). It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former member of the Communist Party, that the Communist Party had infiltrated the union to the extent that, of its important officials, "99.9 per cent" were "pure Communist Party members" (R. 20-21). In July 1953 another former Communist Party member, Jack Davis, who had been an organizer for the U.E., testified that all of the U.E. organizers who attended meetings were members of the Communist Party (R. 21-23). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 23).

On February 9, 1955, at a meeting of the Committee, seven members present, a motion was made and passed that petitioner be subpoenaed to appear "before a Subcommittee of the Committee on Internal Security" (*sic*) in open hearings at Fort Wayne, Indiana. At the same meeting the Chairman of the Committee appointed a subcommittee to conduct the Fort Wayne hearings (Gov't Ex. 5; R. 271-272).¹

¹ On January 20, 1955, the Committee, in executive session, eight of the nine members being present, had adopted a resolution that its Chairman be authorized to appoint subcommittees "for the purpose of performing any and all acts which

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana, on February 21 (R. 169, 175, 178-179). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 179). On February 10, Congressman Walter, the Chairman of the Committee, received a telegram from petitioner protesting on behalf of the union the scheduling of the hearings for February 21, in view of a National Labor Relations Board election at the Magnavox plant to be held on February 24, 1955, involving the U.E. and rival unions (Gov't Ex. 9; R. 171, 174). The telegram claimed, among other things, that the hearing would be a "flagrant use of a Congressional Committee for union-busting", that "we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union-busting", and that the Committee was run by "publicity-mad zealots" who "tarnish[ed]" the Congress with their "stench" (R. 171-173).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 158-162, 174). Because of the tone of petitioner's telegram, Mr. Goldstein's request was heard before the Committee at a recorded session (R. 154, 162), at which the Chairman told Mr. Goldstein that the Committee first knew of the NLRB election when the Chairman received petitioner's telegram (R.

the Committee as a whole is authorized to perform" (Gov't Ex. 7; R. 267-268).

157). The following exchange then took place (R. 158):

Mr. Goldstein: Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the NLRB] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.

Chairman Walter: I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Although repeatedly asked to do so (R. 160-162), Mr. Goldstein refused to state any definite knowledge he might have about an NLRB election. The Committee adjourned without any action being taken (R. 162).

Petitioner's subpoena to appear at the February 21 hearing was served upon him on February 15, 1955 (R. 17). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance until "any time after next week" because of the attorney's extremely heavy schedule and the im-

pending NLRB election at the Magnavox plant (R. 17). The request was at first denied. But after further communication between counsel Mr. Tavenner inquired into the proposed election and explained the situation to Chairman Walter, who agreed that the hearings be postponed (R. 18). The hearings were rescheduled for February 28, 1955, in Washington, D. C. Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 19).

He appeared on February 28 and March 1, 1955, before a subcommittee in Washington, D. C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the acting chairman, explained the purposes of the hearings as follows (R. 54; Gov't Ex. 12, p. 19²):

There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

Before the first witness, Julia Jacobs, was sworn, her attorney filed with the Committee a motion (Def. Ex. 1) on her behalf and on behalf of two other clients of his, petitioner and Lawrence Cover, also subpoenaed to appear before the subcommittee (Hear-

² Government Exhibit 12 is the record of the Hearings Before the Committee on Un-American Activities, House of Representatives, 84th Congress, 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Ind., Area* (hereinafter referred to as "Hearings").

ings, p. 20; R. 55), claiming that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses, and that, in any event, under Article I, Section 3 of the Constitution only the courts can investigate crime; that the Committee's authorizing resolution did not give it the power to engage in breaking a union, and that if it purported to confer this power, it violated the First Amendment; that the authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the outset of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (Hearings, p. 72; R. 60). After a colloquy concerning "union busting", Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (Hearings, p. 79; R. 62). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of its general executive board (Hearings, pp. 73, 83-84; R. 60).

When asked whether he had ever been a member of the Communist Party while holding any of these union offices, petitioner stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-

busting" (R. 63-65). The question was rephrased several times, but he still refused to answer, on the grounds that he had signed affidavits annually from 1949 to 1954 that he was not a Party member, and that the question violated the First Amendment (R. 63, 66-67). Petitioner was then asked whether he had ever been a member of the Communist Party (R. 68, 69-70), and again invoked the First Amendment, disclaiming any reliance on the Fifth Amendment (R. 70). He was also asked whether he had been a Party member at any time during 1948 (R. 66, 73). He refused to answer on the ground that the question violated the First Amendment and that the hearing had no legislative purpose (R. 66-67, 73). He then refused to say whether he was "now a member of the Communist Party",^{*} on the grounds that his affidavit stated that he was not a Communist, that the question violated the First Amendment, and that "I am not going to cooperate with union busters" (R. 74-76). The hearings were then adjourned for the day (Hearings, p. 89).

Petitioner was the first witness when the hearings were resumed on March 1, 1955. After further questions about Communist activities in labor unions (Hearings, pp. 91-92; R. 76-77), the Committee asked whether petitioner had attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 78). The Committee read to petitioner the minutes of the

^{*} This refusal formed the basis of count one of the present indictment.

meeting, which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the Daily Worker (R. 82). Petitioner could not recall these events, nor could he recall who was the Party secretary or chairman in Indiana at the time (R. 82-83, 86-87). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 84, 88-89). The Committee counsel asked petitioner whether he was acquainted with Elmer Johnson⁴ (R. 83, 90). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (R. 90). Petitioner refused to answer this question (count two). He based his refusal on the ground of the Committee's alleged use of paid informers, whom he called liars, on the First Amendment, and on the Committee's lack of authority under its authorizing resolutions to break a union (Hearings, pp. 102-104; R. 91-92).

After charging that a former member of the Committee had used a "paid liar's testimony to try to break [a] strike" (Hearings, p. 105; R. 93), petition-

⁴ The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 25-27).

er refused to say whether he knew Henry Aron⁵ on the same grounds that he had refused to answer the earlier questions, particularly the Committee's use of informers, and the First Amendment (Hearings, p. 104; R. 92). He was subsequently asked, and refused to answer on the basis of the First Amendment, whether Johnson or Aron ever addressed a group of people when petitioner was present (count three) (Hearings, p. 106; R. 94). Petitioner was also questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (Hearings, pp. 112-118, 120, 122-123, 129-132). During this discussion, after Petitioner objected that the Committee was attempting to find him guilty without a trial, Congressman Doyle stated (*id.* at p. 125):

[W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

Petitioner testified that he knew a Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as

⁵ The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 24).

legislative representative of the U.E. in Washington.* Petitioner said that he would not answer questions concerning political beliefs and affiliations because the Committee lacked jurisdiction (Hearings, p. 133; R. 96, 100-102). He then refused for the second time to say whether he knew Russell Nixon to be a member of the Communist Party (count four), on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (Hearings, p. 134; R. 102-103).

The Committee's counsel handed petitioner a letter to him from Russell Nixon, sent immediately after a "peace pilgrimage" to Washington, enclosing a letter from the Metal Workers Trade Union, an organization that the Committee had reason to believe was Communist-dominated (Hearings, p. 139). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (Hearings, pp. 144-145). Committee counsel noted that petitioner had said that he had been involved in many meetings on behalf of peace, and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (Hearings, pp. 141-145; R. 103). Petitioner then refused to answer the question whether he had taken "an active

* Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his alleged Communist Party activities (R. 96-100). Dorothy Funn, a former member of the Communist Party, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 32-40).

part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations know as the American Peace Crusade" (count five) (Hearings, p. 145; R. 104). When petitioner based his refusal to answer on the First Amendment, the Committee counsel said (Hearing, p. 145; R. 104-105):

I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. * * *

Congressman Doyle said (Hearings, pp. 145-146; R. 105):

Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused, on the grounds he had already stated, to say whether he had taken part in the pilgrimage to Washington, whether he was a member of the American Peace Crusade, and whether he had frequently served as chairman of its meetings (Hearings, p. 148).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker, which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 107; see R. 30-31).¹ Petitioner refused, on the grounds he had previously stated, to answer the question who had solicited him as sponsor; nor would he say what method of solicitation had been used (count six) (Hearings, pp. 149-153; R. 108).

ARGUMENT

Petitioner's first contempt of Congress conviction was reversed by this Court in *Russell v. United States*, 369 U.S. 749, on the ground that the indictment was insufficient in failing to set forth the subject of the Committee's inquiry. Petitioner was re-indicted and again convicted, and his conviction was unanimously affirmed by the court of appeals. While presenting a number of other grounds to support his contention that his conviction should not be upheld, petitioner does not now contend that the courts below failed to comply with the mandate of *Russell* or that the indictment is insufficient for the same reasons found by this Court here. We submit that, in the circumstances of this case, the grounds presently advanced by petitioner are not meritorious and do not warrant further review.

¹ The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack", entitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 31).

1. A number of petitioner's contentions raise, under various guises, the very broad question of the basic legitimacy of the House Un-American Activities Committee's function. In contending that the Committee's inquiry here was an unconstitutional exercise of a non-legislative purpose of exposure for exposure's sake, that the statute creating the Committee is unconstitutional on a number of grounds, that the investigation invaded petitioner's First Amendment rights of belief and association, and that the entire proceeding constituted a Bill of Attainder, petitioner is in effect contending that Congress has no power to investigate Communist activities. Such a broad contention is foreclosed by *Barenblatt v. United States*, 360 U.S. 109, and cases following it. *Braden v. United States*, 365 U.S. 431; *Wilkinson v. United States*, 365 U.S. 399. As this Court noted only two Terms ago, in *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 549, it is constitutionally "permissible [for the Legislature] to inquire into the subject of Communist infiltration of educational or other organizations", because "the governmental interest in controlling subversion and the particular character of the Communist Party and its objectives outweigh the right of individual Communists to conceal party membership or affiliations". Membership in the Party is "a permissible subject of regulation and legislative scrutiny." *Id.*, p. 547.

Petitioner's specific assertions in support of his broad attack upon the Committee's legitimacy—that the dominant purpose of the investigation was exposure unrelated to any *bona fide* legislative purpose,

and that the Committee had no legislative purpose in questioning him—are factually unfounded, as the courts below found. The record shows that the Committee had information that the union of which petitioner was an important official was dominated by Communists. The problem of Communist infiltration of labor unions has been a continuing, and plainly valid, object of congressional concern—as is attested by the non-Communist affidavit provisions of the Labor Management Relations Act of 1947 (see *American Communications Assn. v. Douds*, 339 U.S. 382, 390-391, 406) and the amendments thereto added by the Labor-Management Reporting and Disclosure Act of 1959. The Committee here reasonably believed that petitioner could supply information concerning Communist activities in the union. The Committee had sworn testimony that virtually all of the union's officers were Communist Party members. Petitioner was admittedly general vice president of that union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization. That the Committee's purpose in these hearings was to elicit information about Communist activities—rather than to “bust” unions or expose or convict petitioner—was repeatedly stated by the Committee members (see Statement, *supra*, pp. 11, 13; R. 61, 132-134; Hearings, pp. 52, 65).

The circumstances upon which petitioner principally relies to show that the Committee did not have a

valid legislative purpose is that the hearings were first scheduled to be held shortly before an NLRB election in which U.E. was involved. But the hearings were not held as first scheduled; they were postponed until after the election upon receipt by the Committee of the first reasonable request for delay and of formal notice of the election. Petitioner's original telegram contained no request for postponement, and U.E.'s Washington representative, in making such a request, had refused to state any information he might have concerning the election date. It therefore became necessary for the Committee's counsel to make his own inquiry into the election. When he ascertained the facts, a postponement was promptly directed by the Chairman of the Committee. No member of the Committee had any knowledge of the election until petitioner's first telegram.*

The facts of this case bring it squarely within the holding of *Barenblatt* and the cases following it. We submit that reconsideration of those decisions is not warranted here.*

* Insofar as petitioner's claim of improper legislative purpose is based on statements of the Chairman of the Committee and its employees, what petitioner alleges to be the Committee's methods of operation, and that the Committee's investigations generally are conducted for the purpose of exposure, not legislation, this Court has twice rejected, in *Barenblatt*, *supra*, and in *Watkins v. United States*, 354 U.S. 178, such a claim based on identical evidence. Compare R. 195-254 with the Record, pp. 77, 262, 265-266 and petitioner's brief in *Barenblatt*, No. 35, Oct. Term, 1958, and the Record, pp. 11-16, 58-64 and 98-168 and petitioner's brief in *Watkins*, No. 261, Oct. Term, 1956.

* Petitioner asks reconsideration of them on the ground that in recent years the menace of Communism, at least do-

2. Petitioner contends that the second indictment was fatally insufficient in that it failed to set forth in detail the authority of the subcommittee to conduct the inquiry. In *Seeger v. United States*, 303 F.2d 478 (C.A. 2) (following *United States v. Lamont*, 236 F.2d 312 (C.A. 2)), the Court of Appeals for the Second Circuit held that an indictment for contempt of Congress involving the House Un-American Activities Committee must show that the subcommittee was in fact authorized to conduct the inquiry in question. The Court of Appeals for the District of Columbia Circuit, on the other hand, regards a conclusory allegation of authority as sufficient for purposes of the indictment. *Sacher v. United States*, 252 F.2d 828, rev'd on other grounds, 356 U.S. 576; *Shelton v. United States*, 280 F.2d 701, reversed on other grounds *sub nom. Russell v. United States*, 369 U.S. 739.

Insofar as there may be a conflict on this point between the circuits, this is not a proper case to resolve it. For here the indictment was plainly sufficient even under the Second Circuit's strict standard. The indictment¹⁰ alleges the legislation establishing the

mestically, has diminished. However that may be, the hearings in which petitioner refused to answer the Committee's questions were held in 1955, one year after the hearings involved in *Barenblatt* and three years before those involved in the *Braden* and *Wilkinson* cases.

¹⁰ As here pertinent, the indictment (R. 1) reads as follows:

INTRODUCTION

The Committee on Un-American Activities of the House of Representatives, created and authorized by the Legislative

House Committee on Un-American Activities as the Legislative Reorganization Act of 1946, Section 121 (q), 60 Stat. 828, and the specific House Resolution reaffirming its existence at the beginning of the new Congress as H. Res. 5, 84th Congress.¹¹ These set forth the scope of the au-

Reorganization Act of 1946, Section 121(q), (60 Stat. 828), and by H. Res. 5, 84th Congress, at a meeting on February 9, 1955, by motion agreed to, authorized defendant Gojack to be subpoenaed to appear before a Subcommittee of the Committee in open hearing at Fort Wayne, Indiana. The subject of these hearings was Communist Party activities within the field of labor, being a subject and question of inquiry within the scope of the authority of the Committee. On February 9, 1955, the Chairman of the Committee, pursuant to his authority granted by Committee resolution of January 20, 1955, appointed a Subcommittee to conduct the aforesaid hearings and set the time at February 21, 1955. Upon the request of the defendant herein for a postponement, the Chairman, on February 18, 1955, continued the aforesaid hearings until February 28, 1955, in Washington, D. C., which rescheduling was approved by the Committee on February 23, 1955.

¹¹ Both the Act and the Resolution are set forth, in pertinent part, as a preface to the printed hearings, Gov't Ex. 12. Both provide:

Rule X

Sec. 121. Standing Committees

* * * *

17. Committee on Un-American Activities, to consist of nine members.

Rule XI

Powers and Duties of Committee

* * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time

thority granted to the parent Committee, and specifically provide that such authority may be exercised by subcommittees. The indictment then relates that the parent Committee, at a meeting on February 9, 1955, authorized that petitioner be subpoenaed before hearings to be conducted by a subcommittee, and that this subcommittee was appointed by Chairman Walter pursuant to Committee resolution of January 20, 1955. This resolution (Gov't Ex. 7; R. 268) provided that the Chairman was "authorized * * * to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform." The indictment then alleges that the hearings at which appellant testified were held by the subcommittee under the specified "appointment and authorizations" (R. 2).

Thus, here, unlike *Seeger* or *Lamont*, the indictment sets forth the entire chain of authority from Congress to the subcommittee which conducted the particular investigation. The defect in the

investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) if the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

* * * *

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. * * *

indictment involved in *Seeger* was that one of the authorizing resolutions—an essential step in the chain of authority—was left out.¹² There is no such defect in the present indictment; no link in the chain of authority was omitted.

3. (a) The court below found, we think correctly, that the investigation of which the hearings at which petitioner was questioned were a part had been approved by the Committee as required by its Rule I. Indeed, any other inferences from the evidence would be unreasonable. The hearings were part of a continuing investigation by the Committee into Communist Party activities in the labor field, an investigation which the Committee in its annual reports (reflecting the views of all of its members) specifically reported on in 1954 and 1955, and upon which it based legislative recommendations in 1953. It strains

¹² "The first paragraph of indictment purports to relate the substance of a resolution passed by the Committee on Un-American Activities on June 8, 1955 directing the subcommittee to conduct the investigation. The second paragraph then states that 'pursuant to said direction' the subcommittee conducted the hearings at which Seeger appeared as a witness. But the resolution of June 8, 1955 * * * was *not* such an authorization to the subcommittee. It was merely a direction to the parent Committee's clerk to proceed with an investigation. * * * The resolution of July 27, 1955 * * *, which actually purports to authorize the subcommittee to proceed with the hearings was nowhere mentioned. In other words, * * * the indictment contained a wholly misleading and incorrect statement of the basis of that authority." 303 F.2d at 484. The concurring opinion in *Seeger* points out that in *Lamont*, "No allegations whatsoever of authority or scope were alleged" in the indictment. 303 F.2d at 486.

credulity to suppose that this continuing investigation had *not* been approved by the Committee. The hearings at which petitioner appeared were plainly a part of this investigation. As the acting Chairman stated at the outset of the hearings, their purpose was to elicit testimony about Communist activities in the labor field.

(b) There was a proper delegation to the subcommittee of authority to conduct the hearings in question. Both the authorizing statute and the authorizing resolution of the parent Committee empower subcommittees to exercise the full authority of the Committee (see note 11, pp. 19-20, *supra*). The resolution of January 20, 1955 (*supra*, p. 20) was plainly broad enough to encompass the subject of the hearings.

4. The question whether petitioner was adequately apprised of the pertinency of the questions asked him to the subject under inquiry by the subcommittee is not properly presented in this case. For petitioner did not raise the issue of pertinency at the hearings. *Barenblatt v. United States*, 360 U.S. 109; *Deutch v. United States*, 367 U.S. 456. His "general challenge to the power of the Subcommittee" was, of course, not sufficient to raise the pertinency issue. 360 U.S. at 124. In any event, the subject under inquiry and the pertinency of the questions were made abundantly clear to petitioner both in the Chairman's opening statement¹³ and in the course of questioning by the

¹³ It appears that this statement was made in the presence of petitioner, who testified later in the day. Immediately after

Committee. Petitioner's obvious understanding of these matters is indicated by his answers.¹⁴ The opening statement of the Chairman (Statement, *supra*, p. 7) did more "than paraphrase the authorizing resolution and give a very general sketch of the past efforts of the Committee" (*Watkins v. United States*, 354 U.S. 178, 209-210). It was a concise explanation of the subject under inquiry (i.e., Communism in the field of labor), and recited the Committee's belief that the witnesses called had first-hand knowledge of Communist Party activities. Despite the fact that petitioner made no pertinency objection, the Committee gave him additional detailed explanations of its purpose in asking the questions forming the basis of counts four and five (Statement, *supra*, pp. 11-13). These supplementary explanations clearly satisfied the pertinency requirements of *Watkins*. Counts one, two, three and four, involving petitioner's Communist Party affiliations and his knowledge of the Communist Party affiliations of others, were

it was made, Julia Jacobs, the first witness for that day, was requested to come forward to testify (R. 54, 55). Petitioner evidently heard her testimony (Hearings, p. 72), and she was represented by the same attorney who represented petitioner (R. 55, 57). There is additional evidence that petitioner was present when the statement was made (R. 134-138).

¹⁴ Indeed, petitioner took every opportunity to demonstrate to the subcommittee his complete understanding of the area that they were investigating and the questions that he would be asked concerning that area. He indicated at one time that he knew what evidence the subcommittee would use to question him (R. 79-81; see, also, *e.g.*, Hearings, p. 103, and R. 93).

pertinent on their face. See *Barenblatt, supra*, 360 U.S. at 125.¹⁵

5. Petitioner's claim that the Committee was required and failed to overrule his written objections to the Committee's jurisdiction before he was questioned is not properly before this Court, since, as pointed out by the court of appeals (348 F.2d at 356-358), it was not raised by petitioner's experienced counsel in either the district court or the court of appeals. Petitioner concedes as much and offers no justification or excuse (Pet. 28, n. 14).

In any event, the claim is without merit. Petitioner's objections went not to specific questions but to the very jurisdiction of the Committee to proceed with the inquiry (R. 55, 84).¹⁶ That the subcommittee had in fact rejected these objections¹⁷ was made clear to petitioner by the subcommittee's action in proceeding with the hearings and calling the three wit-

¹⁵ Since petitioner was given a general sentence on all counts that was less than the maximum possible sentence on any one count, his conviction must be sustained if any one count is valid. *Barenblatt, supra*, 360 U.S. at 126.

¹⁶ Although petitioner's objections were in the form of a motion to vacate the subpoenas and set aside the hearings, neither counsel nor the witnesses on whose behalf the motion was filed, including petitioner, asked for a ruling before being sworn. Counsel merely asked that his motion challenging the Committee's jurisdiction be filed for incorporation in the record. And the witnesses in fact appeared in response to the subpoenas, were sworn, and answered some questions.

¹⁷ The subcommittee's counsel stated at the Hearings that the motion had been considered by the subcommittee at the beginning of the hearings and that the subcommittee had unanimously voted at that time to overrule it (R. 114).

nesses, including petitioner, on whose behalf the objections had been filed. It was also made clear to petitioner by the fact that he was specifically directed to answer each question upon which he was convicted¹⁸ (R. 74-76, 89-92, 94-96, 102-103, 104), and specifically informed that such directions to answer were being given because his refusal to answer would form the basis for a motion to cite him for contempt (R. 74). Compare *Bart v. United States*, 349 U.S. 219, 222. This Court held in *Quinn v. United States*, 349 U.S. 155, 170, on which petitioner relies, that the Committee is not required to use any set formula to indicate its disposition of an objection. Here, plainly, petitioner was not "forced to guess the committee's ruling" on his objection to its power to proceed, and therefore "he has no cause to complain" (*ibid.*).

¹⁸ In addition, the subcommittee expressly rejected, in advance, substantially the same objections petitioner had made in his motion when they were renewed as to specific questions. Compare petitioner's motions, set forth in Statement, *supra* pp. 7-8, with the objections made to the question forming the basis of count one: R. 59-62, 65, 66-67, 70-71, 73 and 75-76; count two: R. 87, 88, 89, 90; count three: 93-94, 95-96; count four: R. 100-101, 102-103; and count five: R. 104.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
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OCTOBER 1965.

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IN THE
Supreme Court of the United States

JOHN F. DAVIS,

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK,

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—V.—

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**PETITIONER'S REPLY TO THE BRIEF FOR THE
UNITED STATES IN OPPOSITION**

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1. The issue here is not, as the Government seems to assume, whether the Committee could have had a legitimate purpose but whether, in fact, it did.

The record, for reasons stated in the Petition (pp. 18-20), precludes a deference to the formal declarations of the Committee and subcommittee to establish the legislative purpose of the hearing. In addition, the following facts—all of them uncontradicted constituents of a pattern unprecedented in litigation in this area—affirmatively establish the exposure purpose of the hearing:

(a) This was the first hearing conducted pursuant to a “new plan” under which known or suspected “subversives” would be given “a chance in the full glare of publicity” to deny charges against them or “to take shelter behind con-

stitutional amendments," so that they could be "exposed before their neighbors and fellow workers" with a view to insuring that "loyal Americans who work with them do the rest of the job." The purpose of these hearings, Chairman Walter explained, would be "to demonstrate that [the witnesses] are part of a foreign conspiracy" (Pet. p. 4).*

(b) The implementation of this new plan is reflected in the fact that the very first entry in the Committee's file dealing with this case is a decision—not to conduct a legislative investigation but to subpoena petitioner (Pet. p. 5).

(c) On the very day the Committee decided to subpoena petitioner, February 6, 1955, the Committee notified a newspaper in Fort Wayne, where petitioner's union was facing a representation election, that he would be subpoenaed (Pet. p. 6).

(d) On a second occasion, again before the issuance of a subpoena, a local newspaper in St. Joseph, Missouri, where petitioner's union was facing a representation election was "tipped off" by the Committee that a subpoena would be issued (Pet. p. 8).

(e) Prior to the hearing, the Chairman held a public session in response to a request for a postponement at which he told the press that the Committee wanted to break the

* Mr. Walter could hardly have thought that this "new plan" had a legislative significance. On August 26, 1955, he observed, "unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." U. S. News and World Report, August 26, 1955, p. 7; quoted in Judge Edgerton's dissenting opinion in *Watkins v. United States*, 233 F. 2d 681, 693 (App. D. C.). The Committee *knows* that its exposure objectives cannot be validly achieved through legislation (J. A. 238, 239); *Barsky v. United States*, 167 F. 2d 241, 256 (App. D. C., dissenting opinion).

Union "because we do not feel it is good for the United States" (Pet. pp. 6-7).

(f) The personnel manager of one plant in which a union representation election was scheduled announced three days before the subpoena was actually issued that petitioner would be subpoenaed—the same personnel manager who on an earlier occasion had obtained access to petitioner's dossier from the Committee's private files (Pet. pp. 6, 9).

(g) In one interview given to the local press before the issuance of the subpoena, Chairman Walter stated that the Committee intended to show that the petitioner and another witness connected with the Union were "card carrying Communists" and that "the rest is up to the community" (Pet. p. 9). This was plainly an implementation of the "new plan" to expose witnesses so that "loyal Americans who work with them will do the rest of the job" (Pet. p. 4).

(h) Another newspaper was told, through its Washington correspondent that the Committee was interested in breaking the union of which the witness was a leader because its continued existence was not good for the country. The substance of this objective was repeated by the chairman on the floor of Congress (Pet. p. 7).

(i) When the Chairman's exposure campaign was complained of at the hearing by motion, the subcommittee made no effort to deny the facts or disavow that its objective was exposure (Pet. pp. 12-14).

(j) The Committee had no probable cause to believe that petitioner would supply it with information. Despite Chairman Walter's announced intention to demonstrate that the witness was a "card carrying Communist," no evidence was adduced at the hearing or the trial to this effect. Mr. Tavenner's testimony at the trial shows only that the Committee

called the witness because he was an officer of the Union, but no testimony was offered that the Committee had evidence that he personally had been accused of Communism (Pet. pp. 14-17).

2. The Government's statement that this indictment is sufficient under the ruling in the *Seeger* case (Opp. 18) is incorrect. The Court of Appeals ruled not merely that it must be alleged that the subcommittee had *general* authority to investigate within the area of the Committee's jurisdiction, but explicitly that "the indictment was defective because it had failed to allege properly *the authority of the subcommittee to conduct the hearings in issue* and to set forth the basis of that authority accurately." (303 F. 2d at 481, italics added.) In *Seeger* the indictment recited a resolution of June 8th, 1965 which did not authorize the sub-committee to conduct the particular investigation and the indictment did not mention the resolution of July 27, 1965 which purported to authorize the sub-committee to proceed (303 F. 2d at 484). Similarly the indictment here merely recites a statement by the Chairman of the sub-committee at the commencement of the hearings in respect of the subject of the hearings as Communist Party activities in labor (Pet. p. 9) and the indictment does not recite any resolution authorizing the subcommittee to conduct the hearings at issue.

3. The Government has sought to answer our contentions with respect to the failure of the Committee to comply with its Rule I on the ground that the hearings were part of a "continuing investigation" by the Committee. But hearings conducted prior to the first session of the 83rd Congress could not serve as an authorization to continue the hearings into a new Congress without a fresh authoriza-

tion. It is simply not the case, as the Government seems to contend, that congressional committees investigating subversion enjoy a license to conduct marathon non-stop probes based upon vague authorizations in the remote past. Congress is not a continuing body and its powers end at the conclusion of each term. See *Jurney v. MacCracken*, 294 U. S. 125, 151; *Anderson v. Dunn*, 6 Wheat. 204, 225, 230, 231 (1821).*

Moreover, a congressional committee has no legal being until its members are elected at the commencement of the session (see Rule X of the Legislative Reorganization Act, 60 Stat. 812) and the House Rules are adopted which alone authorize it to function. Under these circumstances, it is plain that only a renewed authorization could effectively continue an investigation, uncompleted at the close of a session of Congress, and, indeed, this is the very practice followed by the Committee. See, for example, the opening statement of the 1963 Committee hearings on *Assistance to Foreign Communist Governments* (Appendix).

Respectfully submitted,

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APPENDIX

ASSISTANCE TO FOREIGN COMMUNIST GOVERNMENTS

I will proceed to read this opening statement.

On March 5, 1963, the Committee on Un-American Activities met and duly adopted the following resolution:

WHEREAS at a duly held meeting of the Committee on Un-American Activities held in executive session on August 2, 1962, a resolution was unanimously adopted directing that hearings by the Committee on Un-American Activities, or a subcommittee thereof, be held on such date or dates as the Chairman may designate relating to propaganda activities of members and affiliates of the Communist Party of the United States for certain legislative purposes therein set forth; and

WHEREAS it is the desire and intention of the Committee on Un-American Activities that said hearings which were not completed during the 2d Session of the 87th Congress, proceed and continue during the 88th Congress.

NOW THEREFORE, BE IT RESOLVED, that the hearings heretofore authorized by resolution on August 2, 1962, be continued and held by the Committee on Un-American Activities, or a subcommittee thereof, in Washington, D. C., or at such other place or places as the Chairman may determine, on such date or dates as the Chairman may designate, relating to the same subject and for the same legislative purposes as set forth in said resolution of August 2, 1962.

BE IT FURTHER RESOLVED, that the hearings may include any other matter within the jurisdiction of the

Committee, which it, or any subcommittee thereof, appointed to conduct these hearings, may designate.

The resolution of August 2, 1962, to which I previously referred, was adopted in the preceding Congress, which I now read:

BE IT RESOLVED, that hearings by the Committee on Un-American Activities or a subcommittee thereof, be held in Washington, D. C., or at such other place or places as the Chairman may determine, on such date or dates as the Chairman may designate, relating to propaganda activities of members and affiliates of the Communist Party of the United States, for the following legislative purposes:

1. Consideration of the advisability of amending Title 22, USC, 611(e), by extending the definition of the term "Agent of a Foreign Principal" so as to remove any doubt as to what should be the true test of agency within the meaning of this Act.

2. The execution, by the administrative agencies concerned, of the Foreign Agents Registration Act and all other laws, the subject matter of which is within the jurisdiction of this Committee, the legislative purpose being to exercise continuous watchfulness of the execution of these laws, to assist the Congress in appraising the administration of such laws, and in developing such amendments or related legislation as it may deem necessary.

BE IT FURTHER RESOLVED, that the hearings may include any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct these hearings may designate.

I now offer for the record the order of appointment, by the Committee Chairman Francis E. Walter, of the subcommittee which meets today for the purpose of continuing the hearings upon the subjects and for the legislative purposes set forth in the aforesaid resolution of August 2, 1962, confirmed by the resolution of March 5, 1963:

February 26, 1963

To: Francis J. McNamara, Director
Committee on Un-American Activities

Pursuant to the provisions of the law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of the Honorable Clyde Doyle as Chairman, and the Honorable Edwin E. Willis and the Honorable August E. Johansen as associate members, to conduct a hearing in Washington, D. C., on Wednesday, March 6, 1963, at 10:00 a.m., on subjects under investigation by the Committee and take such testimony on said day or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 26th day of February, 1963.

(S) Francis E. Walter
FRANCIS E. WALTER,
Chairman, Committee on
Un-American Activities.

MAR 9 1966

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TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions and Rules Involved	2
Questions Presented	2
Statement of the Case	4
A. The Proceedings Before the Committee	5
B. Judicial Proceedings	14
1. The District Court	14
2. The Court of Appeals	17
Summary of Argument	18
Argument	29
I. The indictment is insufficient because it fails to specify the subcommittee's authority to investigate the matter alleged to be under inquiry	29
A. The Indictment Does Not Allege the Au- thority of the Subcommittee to Investigate the Matter Under Inquiry	30

B. An Investigation by a Subcommittee of the Committee Into a Subject More Restricted Than the Scope of the Enabling Resolution Must Be Authorized	31
C. The Indictment Was Insufficient Because It Failed to Specify the Subcommittee's Authority	38
II. There is no proof of the authority of the subcommittee to conduct the investigation	45
III. The conviction must be reversed because the hearing was held in violation of a Committee Rule	48
IV. The Committee's hearing was an exercise of the unconstitutional power of exposure	51
A. The Congressional Power of Investigation Must Be Confined to the Limits of the Legislative Process	51
B. This Is a Case of Exposure for the Sake of Exposure	61
V. The Committee's authorizing resolution is invalid because as construed and applied by the Committee it exceeds the legislative power and violates the principle of separation of powers..	70
VI. The conviction rests upon an attainder proceeding prohibited by Article I, Section 9, Clause 3 of the Constitution	87

VII. The compelled disclosures in issue here invade rights protected by the First Amendment	92
VIII. Rule XI is unconstitutional on its face by reason of its vagueness, generality and breadth....	96
A. The Applicable Standards	98
B. The Terms of the Resolution Are Inherently Vague	101
C. The Committee's Consistent Interpretation of the Resolution Establishes Its Unconstitutionality	110
D. Conclusion	118
IX. Petitioner was not advised of the subject under inquiry or the pertinency of the individual questions	121
X. Petitioner's objections were not timely overruled and he was not directed to answer	123
Conclusion	126
APPENDIX:	
Constitutional and Statutory Provisions and Rules Involved	127

TABLE OF AUTHORITIES

Cases

	PAGE
Abie State Bank v. Weaver, 282 U. S. 765	95
American Communications Association v. Douds, 339 U. S. 382	93, 107
Anderson v. Dunn, 6 Wheat. 204	39
Aptheker v. Secretary of State, 378 U. S. 500	101
Arizona v. California, 283 U. S. 423	59
Baggett v. Bullitt, 370 U. S. 360	26, 99, 101
Baker v. Carr, 369 U. S. 186	95
Barenblatt v. United States, 360 U. S. 109	20, 25, 34, 54, 56, 57, 58, 59, 61, 69, 70, 71, 76, 84, 85, 86, 87, 92, 93, 95, 99, 111, 122
Barry v. United States, ex rel. Cunningham, 279 U. S. 597	19, 42
Barsky v. United States, 167 F. 2d 241 (App. D. C.)	62, 105
Bart v. United States, 349 U. S. 219	125
Bates v. Little Rock, 361 U. S. 516	93
Block v. Hirsh, 256 U. S. 135	95
Bowers v. United States, 92 U. S. App. D. C. 79, 202 F. 2d 447	43
Braden v. United States, 365 U. S. 431	70
Burnham v. Morrissey, 14 Gray (Mass.) 221 (1859)	60
Cantwell v. Connecticut, 310 U. S. 296	101
Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210	99

	PAGE
Chastleton v. Sinclair, 264 U. S. 543	95
Christoffel v. United States, 338 U. S. 84	50
Cramp v. Board of Public Instruction, 368 U. S. 278	99, 100, 101
Cummings v. Missouri, 4 Wall. 277	87, 88, 89
Deutch v. United States, 367 U. S. 456 (1961)	34, 42, 75
Dombrowski v. Pfister, 380 U. S. 479	99, 101
Emspak v. United States, 349 U. S. 190	125
Endo, Ex parte, 323 U. S. 283	95
Federal Trade Commission v. American Tobacco Co., 264 U. S. 298	53
Feinglass v. Reinecke, 48 F. Supp. 438 (D. C. Ill.)	102
Flaxer v. United States, 358 U. S. 147	125
Flaxer v. United States, 235 F. 2d 821 (App. D. C.), reversed on other grounds, 354 U. S. 929	45
Flemming v. Nestor, 363 U. S. 603	89
Fletcher v. Peck, 6 Cranch 87	56
Garland, Ex parte, 4 Wall. 333	87
Gibson v. Florida, 372 U. S. 539	93
Grumman v. United States, 370 U. S. 288	4, 39, 78
Harriman v. Interstate Commerce Commission, 211 U. S. 407	53
Herndon v. Lowry, 301 U. S. 242	100
Hirabayashi v. United States, 320 U. S. 81	95
Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203	92

	PAGE
International Assn. of Machinists v. N. L. R. B., 311 U. S. 72	92
Interstate Commerce Commission v. Brimson, 154 U. S. 447	53
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123	90
Jurney v. MacCracken, 294 U. S. 125	38-39
Kilbourn v. Thompson, 103 U. S. 168	20, 52, 53, 54, 56, 58, 60, 61, 69
Lanzetta v. New Jersey, 306 U. S. 451	26
Lanzetta v. New Jersey, 306 U. S. 451	98
Liveright v. United States, 347 F. 2d 473 (App. D. C.) ..	4
Liveright v. United States, 280 F. 2d 708, reversed on other grounds, 369 U. S. 749	45, 49
Louisiana ex rel. Gremillion v. NAACP, 366 U. S. 293 ..	101
Marshall v. Gordon, 243 U. S. 521	52
Martin v. City of Struthers, 319 U. S. 141	101
McCray v. United States, 195 U. S. 27	58, 59
McGrain v. Daugherty, 273 U. S. 135	39, 52, 53, 56
N. A. A. C. P. v. Alabama, 357 U. S. 449	93
NAACP v. Button, 371 U. S. 415	99, 100, 101
Noble State Bank v. Haskell, 219 U. S. 104	95
Price v. United States, No. 18,374 (App. D. C.) (unreported)	4
Quinn v. United States, 349 U. S. 155	3, 29, 53, 56, 125

Rogers v. United Electrical, Radio and Machine Workers of America, Docket No. 119-56	68
Rumely v. United States, 197 F. 2d 166 (App. D. C.)	122
Russell v. United States, 369 U. S. 749	4, 19, 29, 41, 42, 45, 60
Sacher v. United States, 252 F. 2d 828 (App. D. C.), reversed on other grounds, 356 U. S. 576	43, 44, 45
Schechter Poultry Corporation v. United States, 295 U. S. 495	102
Schneider v. State, 308 U. S. 147	101
Schneiderman v. United States, 320 U. S. 118	104, 105
Schware v. Board of Examiners, 353 U. S. 232	101
Scull v. Virginia, 359 U. S. 344	122
Shelton v. United States, 327 F. 2d 601 (App. D. C.) ..	4, 50
Shelton v. United States, 280 F. 2d 701 (App. D. C.), affirming 148 F. Supp. 928, reversed on other grounds, Russell v. United States, 369 U. S. 749	44, 45, 49
Silber v. United States, 370 U. S. 717	4, 39, 75, 78, 126
Sinclair v. United States, 279 U. S. 263	53, 56, 61
Stromberg v. California, 283 U. S. 359	100
Sweezy v. New Hampshire, 354 U. S. 234	100, 101
Talley v. California, 362 U. S. 60	101
Thomas v. Collins, 323 U. S. 516	107
United States v. Brown, 381 U. S. 437	24, 55, 60, 86, 87, 90
United States v. Cardiff, 344 U. S. 174	98
United States v. Cross, 170 F. Supp. 303 (D. C. D. C.) ..	65
United States v. Fields, 6 F. R. D. 203 (D. C. D. C.)	33
United States v. Grumman, 227 F. Supp. 227 (D. C. D. C.)	4, 49

United States v. Icardi, 140 F. Supp. 383 (D. C.)	69
United States v. Josephson, 165 F. 2d 82, <i>cert. denied</i> , 333 U. S. 838	44, 105
United States v. Kamin, 135 F. Supp. 382, 136 F. Supp. 791 (D. C. Mass.)	44
United States v. Knowles, 148 F. Supp. 832, reversed on other grounds, 280 F. 2d 696 (App. D. C.)	44-45
United States v. Lamont, 236 F. 2d 312 (C. A. 2) af- firming 18 F. R. D. 27 (S. D. N. Y.)	19, 39, 40, 43, 44, 61
United States v. Lovett, 328 U. S. 303	87, 88, 90, 91, 103
United States v. Louisville & Nashville R. Co., 236 U. S. 318	53
United States v. Orman, 207 F. 2d 148 (C. A. 3)	122
United States v. Rumely, 345 U. S. 41, 73 S. Ct. 543, 97 L. Ed. 770	43, 44, 49, 53
United States v. Russell, Crim. No. 820-62 (D. C. D. C.) (unreported)	4
United States v. Schwimmer, 279 U. S. 644	106
United States v. Seeger, 303 F. 2d 478 (C. A. 2)	19, 41, 44, 46, 47
United States v. Silber, 227 F. Supp. 227 (D. C. D. C.)	4, 49
United States v. Tobin, 195 F. Supp. 588, reversed on other grounds, 306 F. 2d 270 (App. D. C.)	33
United States v. Whitman, Crim. No. 826-62 (D. C. D. C.) (unreported)	4
Watkins v. United States, 233 F. 2d 681 (App. D. C.)	62, 86
Watkins v. United States, 354 U. S. 178	3, 19, 26, 28, 34, 35, 42, 44, 46, 49, 54, 57, 59, 69, 75, 99, 101, 105, 121, 122

West Virginia Board of Education v. Barnette, 319 U. S. 624	107
Wilkinson v. United States, 365 U. S. 399 (1961)	34, 57, 59, 70
Winters v. New York, 333 U. S. 507	100
Yellin v. United States, 374 U. S. 109	20, 49, 66, 78
<i>Constitutional Provisions:</i>	
United States Constitution:	
Article I, Section 9, Clause 3	3, 52, 87
First Amendment	2, 3, 13, 25, 26, 28, 34, 50, 69, 88, 92, 93, 94, 95, 96, 99, 101, 120, 123
Fifth Amendment	113, 125
<i>Statutes:</i>	
2 U. S. C. §192	4, 35, 40, 41, 55, 60, 61, 98
P. L. 583, 75th Cong. 3rd Sess., 52 Stat. 631	121
P. L. 637, 66 Stat. 775, 50 USCA 781, 792(a)	68
65 Cong. Rec. 5031-5032 (H. R. 78773)	91
78 Cong. Rec. 4934, 4937-38, 4940, 4944-45, 4946	121
81 Cong. Rec. 3286 (1937)	108
83 Cong. Rec. 7572, 7576 (1968)	108
84 Cong. Rec. 4308-4346 (H. R. 4852)	91

	PAGE
86 Cong. Rec. 570-604 (1940)	108
87 Cong. Rec. 4072	91
87 Cong. Rec. 5110	91
89 Cong. Rec. 479-486	87
89 Cong. Rec. 806 (1943)	109
92 Cong. Rec. A3149 (1946)	80
92 Cong. Rec. A4743 (1946)	112
101 Cong. Rec. 1906, 84th Cong. 1st Sess.	8-9
101 Cong. Rec. 3569	42
Cong. Rec. (Daily Ed.), February 8, 1965, pp. 2088, 2195	36, 72
Cong. Rec. (Daily Ed.), Feb. 1, 1965, p. 1592	114
Cong. Rec. (Daily Ed.), April 13, 1965, p. 7719.....	71, 72
Cong. Rec. (Daily Ed.), April 14, 1965, pp. 7740, 7745	34, 67, 114
Cong. Rec. (Daily Ed.), April 14, 1965, pp. 7740, 7750....	114
Cong. Rec. (Daily Ed.), Jan. 27, 1966, pp. 1273, 1274- 1275	67, 71
S. Rep. 21, 89th Cong., 1st Sess.	33
S. Res. 439 (1919)	97
S. Res. 366, 81st Cong., 2nd Sess.	32, 45
S. Res. 20, 84th Cong., 1st Sess.	33
S. Res. 154, 84th Cong., 2nd Sess.	33
S. Res. 209, 84th Cong., 2nd Sess.	33

	PAGE
S. Res. 39, 89th Cong., 1st Sess.	33, 36
H. Rep. 448 (1943) 5, 78th Cong., 1st Sess.	104
H. Rep. 2 (1939), 10, 12, 76th Cong., 1st Sess.	112
H. Rep. 592, 80th Cong., 1st Sess.	110, 115
H. Rep. 1115, 80th Cong., 1st Sess.	115
H. Res. 88, 75th Cong., 1st Sess.	108
H. Res. 28, 76th Cong., 1st Sess.	31
H. Res. 90, 77th Cong., 1st Sess.	31
H. Res. 65, 78th Cong., 1st Sess.	31
H. Con. Res. 52, 81st Cong., 1st Sess.	83
H. Con. Res. 98, 99, 82nd Cong., 1st Sess.	83
H. Res. 5, 84th Cong.	17, 30, 38
H. Res. 151, 84th Cong., 1st Sess.	42
H. Res. 168-70, 187, 228, 258, 86th Cong., 1st Sess.	83
H. Rep. 2277, Parts 2, 4, 77th Cong., 2d Sess.	103
H. Rep. 1311, 78th Cong., 2nd Sess.	110, 115
H. Rep. 2233, 79th Cong., 2d Sess.	80
H. Rep. 2431, 82nd Cong., 2d Sess., 1 p. 2, 8	79
H. Rep. 2228, 86th Cong., 2nd Sess.	111
H. Rep. 1278, Parts 1, 2, 87th Cong., 2nd Sess.	111
H. Rep. 1282, Parts 1, 2, 87th Cong., 2nd Sess.	111
H. Res. 420, 77th Cong., 2nd Sess.	31

	PAGE
H. Rep. 1476 (1940), 2, 76th Cong., 3rd Sess.	112
H. Res. 321, 76th Cong., 3rd Sess.	31
H. Res. 184 (1934)	98
H. Res. 220 (1930)	98
H. Res. 282, 75th Cong., 3rd Sess.	31, 98
Taft Hartley Act, Section 9(h)	14
Communist Control Act of 1950 (as amended)	23

Rules:

Rules of Procedure of the House Committee on Un-American Activities

Rule I	2, 17, 37, 48
Rule III	66
Rule IX	124
Rule XVI	63

Rules of Procedure for Senate Investigating Committees (83rd Cong., 2d Sess.), p. 15	48
--------------------------------------------------------------------------------------------	----

Rules of the House of Representatives

Rule XI, par. 26	9, 24, 25, 26, 31, 42, 43, 84, 86, 96, 98
------------------------	----------------------------------------------

Miscellaneous:

Legislative Reorganization Act of 1946, Section 121(q), 60 Stat. 828	17, 30
Legislative Reorganization Act of 1946, Section 134, 60 Stat. 831-832, 2 U. S. C. 190b	32

Resolution of July 17, 1950, of the Senate Committee on the Armed Services, Sen. Doc. No. 230, 81st Cong., 2nd Sess.	32
Resolution of September 21, 1961, of the Senate Committee on the Armed Services, Hearings before the Special Preparedness Subcommittee, 87th Cong., 2nd Sess.	32-33
House Government Operations Committee, Rule 8	48
House Ways and Means Revenue Subcommittee, Rule 1	48
Senate Government Operations Committee, Rule I	48
<i>Articles and Texts:</i>	
<i>A Program for National Security</i> , Report of the President's Advisory Committee on Universal Training (1947), 39	102
Adams, Geo. B., <i>Constitutional History of England</i> (Schuyler rev. 1934) pp. 228-229, 280	89
Anson, <i>Law and Customs of the Constitution</i> (5th ed. 1922) Vol. I, p. 362	89
Barth, <i>Loyalty of Free Man</i> (1951) 70-71	79
Beck, <i>Contempt of Congress</i> (1959), p. 184, n. 6	76, 85
Brant, <i>Bill of Rights</i> (1965) Chapter 37, "Attainder by Congressional Committees," pp. 459-479	89
Carr, <i>House Committee on Un-American Activities</i> (1952) 139, 174, 202-203, 283, 391-392	80, 81, 83, 110
Commager, "Who Is Loyal to America?" in <i>Primer of Intellectual Freedom</i> (1949), edited by Howard Mumford Jones, 30	106

Comment, <i>Legislative Inquiry into Political Activity</i> , 65 Yale L. J. 1159, 1161	83
<i>Congressional Investigations of Communism and Sub- versive Activities, Summary-Index</i> , 1918-1956, com- piled by Senate Committee on Government Opera- tions, 84th Cong., 2nd Sess. p. 252	7
Cook, <i>The Segregationists</i> (1962)	83
Cook's <i>The Ugly Truth About the NAACP</i>	84
Creasy, E. S., <i>Rise and Progress of the English Con- stitution</i> (3rd ed. 1856) p. 252	89
Cushman, <i>Civil Liberties in the United States</i> (1956) 195-196	83
17 Car. I. DeLolme <i>on the Constitution</i> (1838 ed.) Vol. I, p. 400	90
<i>East-West Trade, A Compilation of Views of Business- men, Bankers, and Academic Experts</i> , Senate Com- mittee on Foreign Relations, 1964, pp. 220, 245, 273, 284	95
<i>East-West Trade</i> , Hearings before the Senate Commit- tee on Foreign Relations, 89th Cong., 1st Sess., Part II, Feb. 24, 25 and 26, 1965, pp. 26-31, 60-62, 116-69, 243-44, 248-50	95
Emerson and Haber, <i>Political and Civil Rights in the United States</i> (2d Ed.) 737	75
Emerson and Helfeld, <i>Loyalty among Government Em- ployees</i> , 58 Yale L. J. 1, 40	104
Feilden, Henry, <i>Constitutional History of England</i> (4th ed. rev. 1911) p. 153	90
Gellhorn, <i>Report on a Report of the House Committee on un-American Activities</i> , 60 Harvard L. R. 1193 ..	115

Hearings before the Committee on Un-American Activities, "Investigation of the Communist Activities in the Fort Wayne, Ind. Area"	13
Hearings before the Subcommittee on "Rules of Procedure for Senate Investigating Committee" (83rd Cong., 2d Sess.), pp. 136, 141-142, 261	48
<i>Hearings, The Communist Party's Cold War Against Congressional Investigation, October 10, 1962</i>	111
<i>Air Reserve Center Training Manual, February 25, 1960</i>	111
<i>American National Art Exhibition in Moscow, July 1, 1959</i>	110
<i>Communist Activities in the Peace Movement (1962)</i>	111
<i>Fund For the Republic, Parts 1, 2 and 3 (1956)</i>	110
<i>Holmes-Laski Letters, the Correspondence of Mr. Justice Holmes and Harold J. Laski, 1916-1935, 21</i>	53
Howell, <i>State Trials</i> , Vol. IV, 598, 599	90
———, <i>State Trials</i> , Vol. XV, 1002, 1012	90
Hume, <i>History of England</i> (Brewer ed. 1880) pp. 183 et seq.	90
Jefferson's <i>Manual</i> , §§317, 343, 415, 418, 672	66
John P. Roche, "American Liberty: An Examination of the 'Tradition of Freedom,'"	92
Kennan, <i>Polycentrism and Western Policy</i> , Foreign Affairs, Jan. 1964	95
Konvitz and Rossiter (eds.), <i>Aspects of Liberty</i> (Cornell University Press, 1958)	92

Landis, <i>Constitutional Limitations on the Congressional Power of Investigation</i> , 40 Harv. L. Rev. 153, 170-186	42
Lasswell, <i>Propaganda</i> , XII Encyclopedia of the Social Sciences, 521-527	97
Library of Congress Legislative Reference Service, Digest of Public Bills, Final Issues for 1953-1958	71
Lowman, "The Public Records of 2109 Methodist Ministers" (1960)	84
———, "The Public Records of 658 Clergymen and Laymen Connected With the National Council of Churches" (1962)	84
———, "6000 Educators" (1959)	84
———, "660 Baptist Clergymen"	84
———, "30 of 95 Men Who Gave Us the Revised Standard Version of the Bible"	84
Maslow, "Fair Procedure in Congressional Investigations", 54 Col. L. R. 839, 856-857 (1954)	49
Medley, <i>English Constitutional History</i> (6th ed. rev. 1925) p. 167	90
Naismith, <i>English Public Law</i> (1873) p. 153	89
<i>New York Times</i> , July 20, 1953, "Sherrill Protests Inquiry Procedure"	81
Note, <i>Punishment: Its Meaning in Relation to Separation of Powers and Substantive Constitutional Restrictions And Its Use In the Lovett, Trop, Perez and Speiser Cases</i> , 34 Indiana Law J. 231, 234-249	89
Nye, <i>Fettered Freedom</i> (Michigan State College Press (1959))	92

	PAGE
Ogden, <i>The Dies Committee</i> (1945) 236-237	110
Redlich, "Rights of Witnesses Before Congressional Committees," 36 N. Y. U. Law Rev. 1126, 1148	69
Report of the Subcommittee on Rules	48
<i>Report on Congressional Investigations</i> by Special Committee on Individual Rights of the American Bar Association (1954, p. 27)	49
<i>Report to the President of the Special Committee on U. S. Trade Relations with Eastern European Countries and the Soviet Union</i> , U. S. Govt. Printing Office, 1965, pp. 1-2	95
Rushworth, <i>Strafford's Trial</i> , pp. 676-677	91
Secretary of State Rusk's speech reported in Congressional Quarterly, March 6, 1964	95
Senate Committee on Rules and Administration, "Rules of Procedure for Senate Investigating Committees" (83rd Cong., 2d Sess.), p. 15	48
Senator Fulbright's speech "Foreign Policy—Old Myths and New Realities," 110 Cong. Rec. 6227	95
Shulman, <i>Beyond the Cold War</i> (New Haven 1965)	95
<i>Some Illustrations of the Harms Done to Individuals By the House Un-American Activities Committee</i> , American Civil Liberties Union, July 28, 1961	79
Stephens, <i>History of Criminal Law of England</i> (1883) Vol. I, pp. 160-161	89
Stormer, <i>None Dare Call It Treason</i> (1964)	83
Story, <i>Commentaries on the Constitution</i> (5th ed. 1891) Sec. 1344	89-90

<i>Suggested Standards For Determining Un-American Activities</i> , The Brookings Institution (Washington, 1945)	113, 114
Supplement to Cumulative Index to Publications of the Committee on Un-American Activities, 1955-1956, 84th Cong., pp. 1, 187	7, 77
<i>The Supreme Court and Civil Liberties</i> , 4 Vanderbilt L. Rev. 533, 540 (1951)	119
U. S. News and World Report, August 26, 1955, p. 7	62
<i>Washington Post</i> , April 5, 1953, "A Velde 'File' Dissected"	81

IN THE
Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK,

Petitioner,

—v.—

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The decision of the District Court is not reported; it appears in the record at R. 206-208. The opinion of the Court of Appeals (R. 419-424) is reported at 348 F. 2d 355.

Jurisdiction

The judgment of the Court of Appeals was entered on May 27, 1965 (R. 424). A petition for rehearing was denied on July 23, 1965 (R. 435). On July 30, 1965 the time in which to file a petition for writ of certiorari was extended

to and including September 21, 1965 (R. 436). The petition for writ of certiorari was filed on September 21, 1965 and was granted on December 6, 1965 (R. 437).

Constitutional and Statutory Provisions and Rules Involved

These are reproduced in the Appendix, *infra*.

Questions Presented

1. Was the indictment in this case insufficient because it failed to specify the authority of the subcommittee of the House Committee on Un-American Activities to conduct the investigation into the subject allegedly under inquiry?
2. Was the conviction invalid because there was no proof at the trial that the subcommittee which interrogated petitioner had authority to conduct the investigation into the subject allegedly under inquiry?
3. Was the conviction invalid because there was no proof that the investigation was authorized by a majority of the full Committee as required by Rule I of the Committee's Rules?
4. Was the subcommittee inquiry in this case an unconstitutional exercise of a non-legislative power to expose individuals and organizations to public criticism and reprisals as an end in itself?
5. Was invasion of petitioner's First Amendment rights and his right to privacy justified by the public interest that would have been served had he answered the questions relating to his political beliefs and associations?

6. Whether, in view of the vagueness of the Committee's authorizing statute and the Committee's announced purpose to expose him and the other circumstances of the case, the pertinence of the questions which petitioner declined to answer in a matter under inquiry was "made to appear with undisputable clarity" within the meaning of *Watkins v. United States*, 354 U. S. 178, 214-215.

7. Was petitioner clearly and timely apprised whether the grounds for his objections to answering the questions put by the subcommittee were accepted or rejected, as required by *Quinn v. United States*, 349 U. S. 155?

8. Whether the statute creating the Committee and defining its power is unconstitutional on its face or as applied in this case in that

- (a) it exceeds the legislative power of Congress;
- (b) it is too vague and indefinite;
- (c) it abridges rights secured by the First Amendment;
- (d) it violates the constitutional principle of separation of powers.

9. Whether the entire proceeding resulting in petitioner's conviction is unconstitutional as a Bill of Attainder within the prohibition of Article I, Section 9, Clause 3 of the Constitution.

Statement of the Case

Petitioner was charged in December 1955 in a nine-count indictment with having unlawfully refused to answer nine questions pertinent to the matter under inquiry by a subcommittee of the House Committee on Un-American Activities. 2 U. S. C. 192. This indictment with its six surviving counts was dismissed by the Court on May 21, 1962 together with the indictments in five companion cases on the ground that the indictment in each case failed to specify the matter under inquiry. *Russell v. United States*, 369 U. S. 749. The same defect resulted in the dismissal at the same Term of the indictments in *Grumman v. United States*, 370 U. S. 288 and *Silber v. United States*, 370 U. S. 717.

After reindictment under the contempt statute¹ on a six-count charge, petitioner was convicted and sentenced to a fine of \$200.00 and a jail sentence of three months (R. 8). The Court of Appeals affirmed *per curiam*.

The pertinent facts are as follows:²

¹ There were also reindictments in the seven other contempt of Congress cases reversed at the October, 1961 Term. But all the cases were dismissed at the trial (*United States v. Russell*, Crim. No. 820-62 (D. C. D. C.) (unreported); *United States v. Grumman*, 227 F. Supp. 227 (D. C. D. C.); *United States v. Silber*, 227 F. Supp. 227 (D. C. D. C.); *United States v. Whitman*, Crim. No. 826-62 (D. C. D. C.) (unreported)) or appellate level (*Shelton v. United States*, 327 F. 2d 601 (App. D. C.); *Liveright v. United States*, 347 F. 2d 473 (App. D. C.); *Price v. United States*, No. 18,374 (App. D. C.) (unreported)). The *Russell*, *Grumman* and *Silber* cases, like the instant case, involved the House Committee on Un-American Activities. The remaining four cases involved the Internal Security Subcommittee of the Senate Judiciary Committee.

² Certain additional facts are discussed in the course of the argument.

A. The Proceedings Before the Committee.

On November 19, 1954, Representative Francis E. Walter announced what the aims of the House Committee on Un-American Activities (hereinafter referred to as the "Committee"), would be when he assumed its chairmanship in January of the next year at the commencement of the 84th Congress (R. 180-181, 176-177, 401-407; G. Exhs. 14-14-A):

"Rep. Francis E. Walter (D. Pa.) who will take charge in the new Congress of House activities against Communists and their sympathizers, has a new plan for driving Reds out of important industries.

"He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy or to take shelter behind constitutional amendments.

"By this means, he said, active communists will be exposed before their neighbors and fellow workers, 'and I have every confidence that the loyal Americans who work with them will do the rest of the job.'"

* * * * *

"Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"We will force these people we know to be Communists to appear by the power of subpoena,' Rep. Walter said, 'and will demonstrate to their fellow workers that they are part of a foreign conspiracy.'"³

³ The Government did not contest the authenticity of this quotation (R. 176-177, 401-405; G. Exhs. 14-14-A).

On February 9, 1955, the Committee held a meeting, the minutes of which record the following action relevant to this case (R. 12, 212-213; G. Exh. 5);

• • • • •

Mr. Scherer moved that David Mates and John Gojack be subpoenaed to appear before a Subcommittee of the Committee on Internal Security [sic] in open hearing at Fort Wayne, Indiana; and that a Dr. Scharfman be subpoenaed to appear in executive session at Fort Wayne, Indiana. The Chairman then designated Mr. Moulder, Mr. Doyle, and Mr. Scherer as a subcommittee to conduct the hearings in Fort Wayne, Indiana, and set the time at February 21, 1955.

• • • • •

The above quoted decision to subpoena petitioner, then an officer of the United Electrical, Radio and Machine Workers of America (UE) (referred to hereinafter as "the Union"), before a "subcommittee of the Committee on Internal Security," is the first entry in the Committee's records purportedly dealing with the hearing at which petitioner ultimately appeared (R. 132-134). There are no earlier (or later) entries, resolutions or minutes in the Committee's files delegating to the subcommittee above designated (or any other subcommittee of the Committee) authority to conduct a hearing into the subject asserted in the indictment (R. 1) and at the hearing (R. 219) to be under inquiry (R. 206). Not only was there no subject officially delegated to the subcommittee but the files of the Committee contain no record of an authorized investigation by the newly-constituted Committee of which the hearing could be deemed a part (R. 131-134, 206, 88-89; D. Exh. 2). Moreover, the February 9 decision to subpoena

certain named individuals without reference to a duly authorized investigation or hearing probing into a specific legislative subject matter also scheduled the very first Committee interrogation in 1955, following Chairman Walter's announcement of a "new plan" described above, to expose "active Communists" by forcing them "to appear by the power of subpoena."⁴

While the minutes themselves do not reflect the fact that Congressman Scherer's motion to subpoena petitioner was approved, the record shows that on February 9, 1955, the day of the Committee meeting, a newspaper in Fort Wayne, where the hearings were scheduled to be held, printed a story quoting a statement made by the Chairman that petitioner would be called to testify before the Committee in Fort Wayne (R. 94-95, 123-124, 130-131). When the announcement was made, the subpoena had not even been issued: it was issued on February 10 and petitioner was not served until February 15 (R. 127-128).

Because the proceedings might affect the outcome of a National Labor Relations Board election among the employees of the Magnavox Company, scheduled for February 24, in Fort Wayne, many—including petitioner—protested on behalf of the Union (R. 125-127, 227, 229, 372-374). Petitioner's protest also charged that, three days before the public announcement of the hearing, Mr. George McClaren, the labor relations director of the Magnavox Company, whose employees were involved in the election, announced to the employees that petitioner would be subpoenaed (*Ibid.*).

⁴ See *Supplement to Cumulative Index to Publications of the Committee on Un-American Activities, 1955-1956, 84th Cong., p. 1; Congressional Investigations of Communism and Subversive Activities, Summary-Index, 1918-1956, compiled by Senate Committee on Government Operations, 84th Cong., 2d Sess., p. 252.*

On February 14, a representative of the Union sought a postponement of the proceedings because of the pendency of the election (R. 115-119). The Chairman insisted that the application be made at an open hearing, called in the press before the application was made (R. 112-115)^a and announced in the course of a recorded interrogation of the applicant that "all of us are interested in seeing your Union go out of business, because we do not feel it is good for the United States" (R. 116, 120). Additional comments in the same vein were made by Chairman Walter and by Congressman Moulder, the subcommittee Chairman, who was also present (R. 114, 119-122).

On February 15, a Fort Wayne newspaper printed a boldly-headlined story, the accuracy and authenticity of which is unchallenged (R. 85, 401-405; G. Exhs. 14-14-A), "House Un-America (sic) Committee Wants UE 'Out of Business'" (R. 407; D. Exh. 1). The story, under the by-line of a reporter present at the interrogation (R. 111-112), states, "Chairman Francis Walter (D-Pa.) and Rep. Morgan Moulder (D-Mo.), both declared the committee should try to break the hold of the Union on defense plants" (R. 407). Thus an application for adjournment made to protect the Union from the prejudicial impact of the Committee's planned hearing resulted in a further attack on it by the Committee.

On February 18, the hearing was adjourned until February 28 (R. 14-16). On February 22, two days before the election, the Chairman again attacked the Union—this time on the floor of Congress (101 C. R. 1906, 84th Cong. 1st

^a The Chairman refused to hear the application because it was not made under oath (R. 115-119).

Sess.). He called for the defeat of the Union in the collective bargaining election, complained that telegrams and letters demanding cancellation of the hearings were subversively inspired^{*} and stated that the "postponement was agreed to very reluctantly and only after it was feared that false and malicious charges against the committee by the UE might result in this communist-dominated union continuing as the bargaining agent in this vital defense plant."

On February 23, the Committee discussed the Fort Wayne hearings at a meeting (R. 213-215; G. Exh. 7). The minutes of this meeting, like the minutes of February 9, contain no reference to a proposed subject matter for investigation by the subcommittee but merely record the fact that the hearing had been continued (R. 213-215; G. Exh. 7).

It was conceded at the trial that the minutes of February 9 and 23 constitute all of the Committee's file entries on the subject of the Fort Wayne hearing (R. 131-134, 205-206).[†]

Since the adjourned hearing was transferred to Washington, a second subpoena was issued on February 18 (R. 16). Before the second subpoena was even served, a local newspaper was briefed on its issuance as well as the exposure purpose of the hearing. The *St. Joseph Herald-Press*, a newspaper in St. Joseph, Michigan, where the Union functioned as the collective bargaining agent for the

^{*}The witness who preceded petitioner, Lawrence Cover, was called and interrogated in an effort to establish the tainted origin of the protest against the timing of the hearing and to obtain identification of Union officers who had sent telegrams (R. 227-229).

[†]Rule XI, par. 26 of the Rules of the House of Representatives provides: "(b) Each Committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded."

employees of the Whirlpool Company, on February 21 printed a statement of the Committee Chairman, the accuracy of which is uncontested (R. 279), that the hearing would expose petitioner and another subpoenaed witness as "card carrying Communists" and that, "the rest is up to the community" (R. 408; D. Exh. 1). The rescheduled hearing also overshadowed a representation election; as the story noted "the hearing will precede by three days the N. L. R. B. representative election at Whirlpool" and "may have a direct influence" on its outcome. The account also quoted Chairman Walter's statement of the Committee's desire to see the end of the Union which had appeared earlier in the Fort Wayne press (*ibid.*).

At the commencement of the hearing petitioner's counsel filed a motion, to which were appended the newspaper accounts referred to above, objecting to the hearings and moving to vacate subpoenas on the following grounds (R. 220, 405-406):

"1. The Committee is not engaged in a legislative investigation for a *bona fide* legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by the newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack and Jacobs 'to bring out the facts that they are card carrying Communists. The rest is up to the community.'

This purpose is not legislative to character and hence is outside the committee's powers.

"2. If the Committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

In any event, the power to inquire into crime is one which is confined exclusively to courts and grand juries under Article I, Section 8 of the Constitution.

"3. The purpose of breaking a union is not one which is authorized by the committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

"6. The Committee intends, as its Chairman has announced, to exact compulsory disclosures of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry."

The motion was received by the Committee with the comment (R. 220) that "whatever action the Committee desires to take on it, we will take."

After petitioner had declined to answer the questions which gave rise to the indictment, the subcommittee Chairman announced (R. 374-375), that at the time the motion had been filed, "the members of the subcommittee unani-

mously voted to overrule the objections and the motion to vacate the subpoenas. Therefore, I want the record to show that at that time, *nunc pro tunc*, the objections and the motion to vacate subpoenas are overruled."

Not only was the action on the motion belatedly communicated to petitioner, but no statement of legislative purpose, particularization of the matter under inquiry, or disavowal of the motion's charges was made when the motion was filed.

Near the close of the testimony of the first witness, the Chairman took note, not of the specific allegations in the motion, but of "newspaper articles" referring to the hearing as an effort by the Committee "to break or bust unions." The Chairman disavowed this general objective but insisted (R. 225) that "it is our intention and purpose to point out to the public, as well as union members, Communist domination or Communist activities in such unions wherever it may exist." He subsequently added that the Committee was "dedicated to expose communistic activities" (R. 230). Congressman Scherer agreed that the Committee's purpose was "to help [unions] relieve themselves of Communist domination" (R. 225; see also R. 283). And Congressman Doyle informed another union witness (R. 384) "that the "Committee's legislative assignment" was "to break up . . . if we can, any Communist Party controls or efforts to control either your union or any other union."

At the commencement of the hearing and before the motion was filed, the subcommittee Chairman announced that the hearing would consider testimony (R. 219) "relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor

organizations, and the dissemination of Communist Party propaganda." The record does not show that petitioner, who was the third witness, was present when the statement was made.*

Petitioner was subjected to an unusually comprehensive probe of his life—both public and private. He was asked not only the conventional questions about his politics, but about his employment since 1935 (R. 244-245, 249-255), his discharge from the Army in 1937 (R. 244-248), his draft status in World War II (R. 256-261) and whether he had falsified a claim to a high school education in a questionnaire he had signed fifteen years earlier (R. 345-350).

Petitioner responded to most of the questions put to him by the subcommittee Chairman and members—about five hundred in number—but declined to answer the six questions which gave rise to the indictment, both on First Amendment grounds and on the ground that the purpose of the hearing was an illegal one, exposure (R. 263, 266, 268, 270, 283, 286, 288, 289, 291, 292, 296, 323, 326, 327, 330, 340, 362, 366, 369, 376, 377). In response to one question, the witness protested that (R. 343), "I don't think the law under which this Committee operates was set up for exposure pur-

* The Government has pointed to the fact that petitioner objected to certain questions asked of the first witness (R. 274). But that is hardly proof that he heard Congressman Moulder's statement, especially since the questions to which he referred were asked long after hearings commenced (R. 96-98; G. Exh. 12, "Investigation of Communist Activities in the Fort Wayne, Ind. Area", Hearings before the Committee on Un-American Activities, 84th Cong., 1st Sess., p. 40). The Government introduced evidence that petitioner was seen conferring with the first witness prior to the opening of the hearing and that he was not observed leaving the hearing (R. 100-109). But there was no testimony that he was actually present when Congressman Moulder made his initial statement about the scope of the hearing (R. 219).

poses. My understanding is that that is what the courts are for, to expose people." Congressman Scherer, echoing earlier statements by the subcommittee Chairman (*supra*, p. 12) replied (*Ibid.*), "Their job is to judge, not to expose. It is the job of this Committee to expose Communists. That is one of its primary duties, to expose Communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions."

In answer to questions about whether he was a Communist, petitioner pointed to the fact that beginning in 1949 he had signed affidavits, pursuant to Section 9(h) of the Taft-Hartley Act, that he was neither a member of, nor affiliated with the Communist Party and that he neither believed in, was a member of, nor supported any organization dedicated to the overthrow of the United States Government by force or by any illegal or unconstitutional methods (R. 262-264, 269).

B. Judicial Proceedings.

1. The District Court.

Petitioner was reindicted on September 4, 1962 under the contempt statute in a six-count indictment based on refusal to answer the following questions (R. 1-3):

1. Are you now a member of the Communist Party?
2. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.
3. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron appear and address a group of people when you were present?

4. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?

5. Did you take active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?

6. What method was used to get you as an original sponsor? [That is, original sponsor of the American Peace Crusade.]

Petitioner moved to dismiss the indictment on a number of grounds, including its failure to state facts constituting an offense against the United States. This and other pre-trial motions (R. 5-7) were denied (R. 8).

The record is, for the most part, a stipulated replica of the record in the first trial. The Government supplemented the first trial record with documents (G. Exhs. 5 and 7, *supra*) dealing with the Committee's purported authorization of the hearing. Certain materials, excluded from the evidence at the first trial, in support of petitioner's contentions that the hearing was called to expose and injure him and his Union, that exposure had dominated the Committee's activities from its origin and that it is the characteristic mode of the Committee's exercise of jurisdiction, were received in evidence (R. 142-181). The first trial record was further supplemented by expert testimony (R. 181-205) that the individual and public interests safeguarded by the right of free speech and assembly and by the right of privacy outweighed the public interest in securing answers to the questions which gave rise to the indictment.

Frank S. Tavenner, the Committee's Counsel and the Government's principal witness, testified (R. 13) that the

Committee had been investigating Union officials since 1949 and that in 1951 it had heard testimony that the entire Union was saturated with Communists (R. 16-18). He testified further that in July 1953, a witness offered the information that a group of Union organizers (in a District other than petitioner's) were Communists (R. 18-19). No testimony was adduced that the Committee had information that petitioner was a "card carrying Communist," to use Chairman Walter's words, or any other kind of Communist.

Mr. Tavenner further testified (R. 19-22) that in 1947 Aron and Johnson (Indictment, Counts 2 and 3) had been identified as Communists before the Committee. But no testimony was adduced that the Committee had any basis for linking petitioner politically with these individuals. Similar testimony was presented that the individual (Russell Nixon) referred to in Count 4 had been identified as a Communist (R. 26-32). The Government further showed that petitioner—together with other Vice-Presidents of the Union—received a letter from Nixon with an enclosure of a document calling for peace addressed to the Union, from the Metal Workers of Paris (R. 33-40). Finally, the Committee adduced evidence that the American Peace Crusade (Counts 5 and 6) had, in 1951, been cited—by the Committee itself—as a "front organization" (R. 23-24), and that petitioner was one of its sponsors (R. 25-31).

It was stipulated that, for every year prior to the hearing since 1949, petitioner had filed non-Communist affidavits stating under oath the disclaimer referred to above (R. 44-51). Petitioner also introduced evidence that Labor Relations Director McClaren of the Magnavox Company had in 1953 during the period when the Union was the collective bargaining agent for the Company's employees, obtained

from the Committee through his Congressman petitioner's political dossier in the Committee's files (largely mirrored in the hearing) and had circulated it among the Magnavox supervisory employees (R. 134-141; 409-418; D. Exhs. 3, 3-A, 4) with the notation that "If your friends or neighbors would like copies of this report, we will be glad to supply additional copies for them."

The trial court in upholding the indictment against petitioner's claim that it lacked a specification of the subcommittee's authorization to investigate the matter alleged to be under inquiry, ruled (R. 110) that its mandate was adequately spelled out (1) by the fact that the Legislative Reorganization Act and House Resolution 5 (both referred to in the indictment) vest the authority of the full Committee in its subcommittees; (2) by the recital of the authorization to subpoena petitioner and (3) by the identification of the matter under inquiry by Chairman Moulder at the hearing.

It found in the record of the Committee minutes, referred to above, evidence that the full Committee had complied with its Rule I, which requires approval of an investigation by a majority of the Committee (R. 111). It concluded that the hearing had a legislative purpose and that the interest in requiring petitioner to respond to the questions outweighed the interests in free speech and privacy (R. 206-208).

2. The Court of Appeals.

The Court of Appeals affirmed the conviction in a *per curiam* opinion (R. 419-424) which specifically rejected some of petitioner's contentions and ignored the rest. The court ruled that there was "one serious question presented by this record" (*infra* p. 126), the failure of the subcom-

mittee to make a timely ruling on the objections which petitioner had urged at the commencement of the hearings. However, the court ruled that it was "not disposed to consider the matter" in view of the fact that it had not been urged as a ground for reversal although it had been referred to in another related connection. The concurring judge found no merit in the majority's reservations. The petition for rehearing squarely raising the issue adverted to by the court below was denied (R. 435).

Summary of Argument

I.

The indictment in this case refers to the matter under inquiry ("Communist Party activities within the field of labor") as announced, in part, by the subcommittee Chairman at the commencement of the hearing. But the indictment nowhere specifies how the subcommittee acquired the authority to conduct the hearing. The sources referred to in the indictment merely refer to the Committee's general jurisdiction, the power of the chairman to appoint subcommittees, the appointment of a subcommittee and an action continuing the hearing.

Both the Committee's charter as well as the practice of Congressional committees to which it is analogous, require that the Committee must proceed by an official delegation of a defined portion of its authority. In addition, the Committee must clearly define the particular subject under inquiry as a prerequisite to the exercise of the power of compulsory disclosure, because of pertinency and due process requirements.

A subcommittee of the Committee has no power to hold hearings without authority for such authorization gives it competence to proceed as well as a legislative purpose *Watkins v. United States*, 354 U. S. 178, 207.

The Committee, which characteristically acts through subcommittees, recognizes the importance of a clearly-defined authorization, for it has made it a practice of reciting such authorizations at the commencement of its hearings. And when such an authorization lapses at the end of a term of Congress the Committee adopts a renewing authorization to validate the continuence of an investigation.

The failure of the indictment to specify the subcommittee's authority is thus a fatal lapse. If such authority had been designated petitioner would have been able to litigate at the outset the claim made at the hearing that there was no legislative purpose. In addition if, as the Government now contends, the hearing was authorized at some earlier session of Congress, the indictment would have been subject to attack on the ground that authorization had lapsed and had not been renewed. The cases which have dealt with this issue (*United States v. Seeger*, 303 F. 2d 478 (C. A. 2) and *United States v. Lamont*, 236 F. 2d 312 (C. A. 2) affirming 18 F. R. D. 37) have squarely held that an indictment which fails to specify a subcommittee's authority is invalid. Moreover, *Russell v. United States*, 369 U. S. 749 obviously requires that the indictment enlighten the defendant and the court not merely as to the matter under inquiry as announced at the hearing but also as to the matter confided to the subcommittee in the first place. That this is so is indicated by the decision of the Court in *Barry v. United States*, ex rel. *Cunningham*, 279 U. S. 597, 613, as well as by the views of the House itself.

In addition, without a reference in the indictment to the subcommittee's authorization there is no way for a court or a defendant to determine whether in a hearing of limited scope the authority exercised by the subcommittee conforms to the authority delegated to it.

II.

The proof could not, of course, cure the defect in the indictment but in any event there is no proof that the subcommittee which conducted the hearing was, in fact, properly authorized to do so.

III.

A Committee Rule requires that investigations of the kind involved here be activated by a vote of a majority of the members of the Committee. The record in this case affirmatively shows that no such approval was ever given. The conviction therefore cannot stand. *Yellin v. United States*, 374 U. S. 109.

IV.

The hearing in this case was an exercise of the unconstitutional power of exposure. We concede that courts must be hospitable to Congressional inquiries, but it is equally true that courts cannot tolerate usurpation of the functions of other branches of Government.

From *Kilbourn v. Thompson*, 103 U. S. 168, to *Barenblatt v. United States*, 360 U. S. 109, the Court has made it clear that there is no legislative power to investigate the private affairs of private individuals as such. Nor does the Congress or any of its committees possess the power to investigate in order to punish a witness. This is a law-enforcement power confided exclusively to the courts.

The distinctions between legislative power which concerns itself with rule-making and the law-enforcement functions of the Executive and the Judiciary are well established and clearly understood. Congress cannot either on its own or through one of its committees establish a standard of conduct and then apply sanctions to those it finds guilty. The Committee here usurped law-enforcement functions.

In determining whether or not a Congressional committee has departed from its proper functions a court cannot speculate as to the motives of individual committee members. When Congress has enacted legislation which falls within its constitutional competence there is a presumption that its purpose was legislative. Congressional investigations are governed by the same principle but the determination of a legislative subject matter depends on considerations far more varied and informal than are involved in the determination of legislative purpose in the case of a statute. But the difficulty of the task does not diminish the duty of a court to scrutinize the claim of a valid legislative purpose. The very principle of separation of powers which commands the deference of a court to an assertion by the legislature of a proper purpose also requires it to prevent encroachments on other branches of the Government.

The record here, in contrast to cases in which the court has found a legislative purpose, affirmatively establishes proof of exposure. Thus, there can be no presumption of regularity or of legislative purpose because the subcommittee's authority to act was neither pleaded nor proved.

Clearly indicative of the exposure purpose of the hearing was the fact that this was the first hearing conducted pursuant to a new Committee plan to engage in bigger and

better exposure hearings with a view to stimulating community reprisals. The entire record shows how this plan was executed. The Chairman indicated on several occasions that the purpose of the hearing was to expose petitioner to private hostile action against him and to break the Union of which he was a leader. Petitioner was subpoenaed twice—his first hearing was postponed. Special interviews were given to the local press in two different communities before the hearing was scheduled to be held. The Personnel Manager of a plant in which petitioner's Union was faced with an election was able to announce three days before the issuance of the subpoena that a subpoena would be issued. Chairman Walter expressly told a local newspaper that the hearing would demonstrate that petitioner was a "card-carrying Communist" and that "the rest" would be "up to the community." Another newspaper was told that the Committee was interested in breaking petitioner's Union, an objective which was reiterated by the Chairman on the floor of the Congress. The subcommittee which presided over petitioner's hearing was informed of the Chairman's announcements and actions, but did not disavow them. On the contrary, the Chairman of the subcommittee as well as the subcommittee members clearly indicated that the purpose of the hearing was to purge petitioner from leadership in his Union and to injure the Union. The exposure purpose thus revealed in the entire record is emphasized by the fact that the Committee had no evidence to warrant the belief that the petitioner was a "card carrying Communist."

The fact is that the hearing was conducted as part of an enforcement program of a statute invented by the Committee but never passed by Congress against certain proscribed labor organizations. This invented statute is in derogation

of a statute actually passed by Congress six months before the hearing was held (the Communist Control Act of 1950, as amended). Investigations under that Act were confided to the Attorney General who filed a petition against the Union on December 20, 1955, which was ultimately dismissed.

V.

The record in this case must be evaluated in the light of a pattern of exposure which has characterized the Committee's operation from the beginning. The Committee's self-proclaimed purpose has been exposure. The "facts" are already known to the Committee and the investigative inertia is overcome not because of an investigative need for facts, but only because the names of new exposable victims have become known to the Committee. The Committee's exhaustiveness and its continuity demonstrate that it has transformed itself into a law enforcement tribunal.

The extraordinary stress on names explains the Committee's demand of witnesses that they inform on others—even when this demand means a sacrifice of the information which the witness possesses. The hearing is merely a forum in which the witness whose lack of cooperativeness is known in advance is exposed and punished. In order to enhance the punishment the Committee insists on public sessions, where it is easy to stimulate economic, social and political sanctions against the unfriendly witness, to deprive him of his constitutional rights and to isolate him from the protections of his society. This exposure purpose and the importance of inspiring reprisal movements among its supporters explains the Committee's extraordinary use of field

hearings, its collaboration with the press and its lack of legislative output.

In addition to its investigations, the Committee also engages in ancillary non-legislative activities such as a listing of condemned organizations and the circulation of indices, dossiers and propaganda. The harshness of this exposure system has given rise to the practice of "clearing" the repentant and the blacklisted—a wholly non-legislative function.

Thus, petitioner's exposure hearing was the product of a unique exposure tribunal, an autonomous power system whose entire functioning is unified and explained by its purely non-legislative motivations.

This exposure pattern reinforces our contention with respect to the purpose of the hearing and independently condemns Rule XI itself as an unconstitutional usurpation of power.

VI.

If we are correct in our contention that the hearing was called for purposes of exposure, then there can be little doubt that the mere summoning of petitioner was an attainder. It cannot be doubted that exposure is punishment in the attainder sense. *United States v. Brown*, 381 U. S. 437. It is a judgment handed down without judicial trial that an individual is guilty of subversion. He is punished by the publication of that fact so that a badge of infamy can be attached to him. The exposure system is fostered by the same climate as that in which attainders flourished. It reflects the extent to which popular clamor and prejudice have forced a breach in the forms of law.

VII.

The compelled disclosures invaded rights protected by the First Amendment and are not "balanced" by overriding public interests. There is no question that under *Barenblatt* inquiries of the kind involved here raise First Amendment questions and that these questions can be resolved in favor of the Government only if there is a legislative purpose and a strong legislative need for the information sought. Here the Committee's purpose was too ambiguous (even if legislative) to override petitioner's First Amendment rights. Besides the Committee already had detailed information about petitioner. He had filed non-Communist affidavits for five years prior to the date of his appearance. There was no probable cause that he possessed information that might be helpful to the Committee. The hearing resulted from "indiscriminate dragnet procedures." And quite apart from these considerations, an expert testified that the First Amendment claims asserted here outweighed the interests of the Government in obtaining answers to the questions.

The Court must finally recognize that we are not under a threat of internal subversion of such menacing proportion as to require continuing curtailment of our freedoms. The premises either of a domestic or a foreign threat are wholly unreal and if valid reasons ever supported the constitutionality of compulsory disclosures in this area they are now anachronistic and must be reexamined in the light of a changed domestic and world situation.

VIII.

Rule XI itself is unconstitutional by reason of its vagueness and breadth, and here too changing circumstances require a fresh look by the Court.

The Rule deals with speech alone and authorizes a committee of Congress to label and classify ideas. This legislative thrust into a First Amendment area is not well defined but is vague and amorphous. The Rule when read together with the contempt statute not only offends due process (*Lanzetta v. New Jersey*, 306 U. S. 451, 453) but even standing alone does not satisfy the demands for precision which the First Amendment imposes on restraints on the protected freedoms. *Baggett v. Bullitt*, 370 U. S. 360.

In a series of cases the Court has condemned as excessively vague statutes whose terminology mirrors that of Rule XI. The Court in *Watkins*, *supra* at 202, noted the inherent vagueness of the Rule. The vagueness of the Rule has long been noted by other authorities. Prior to the time of the adoption of the Rule, members of Congress complained that such terms as "un-American" and "subversive" lacked meaning, and the Committee itself has recognized no meaningful limitation on the permissible range of its activities.

The legislative background and committee interpretation of the terms of the Rule are not helpful in limiting its scope. When the initial resolution was passed in 1938, members of Congress unsuccessfully sought to have its meaning defined. The members of the Committee themselves in 1940, during the debate on the reenactment of the resolution were in conflict on the meaning of the term "un-American." And in 1942 a minority report of the Committee complained of the majority's tendency to brand as subversive and un-American viewpoints which it disapproved. In 1945 the committee sought aid from a private institution in interpreting the resolution. Its own interpretations of the term "un-American" have included such standards as the denial of the existence of a God, absolute

social and racial equality, destruction of private property, advocacy of a planned economy and opposition to the system of checks and balances.

The unconstitutional range of the resolution is best seen from the Committee's application of it in its day to day functioning. In the course of hearings the Committee, or various of its members, has characterized as "un-American" such programs and issues as the legislation proposing the reorganization of the Court, criticism of members of Congress, and of the FBI, and support of New Deal legislation. In the same way, belief in the extension of universal suffrage, support for Harry Bridges, advocacy of anti-poll tax legislation and criticism of the McCarran-Walter Immigration Act have been characterized as evidence of subversion.

More recently the Committee has attacked criticisms of blacklisting in the theatre, liberal Christianity, the scholarship program of the National Science Foundation, the Peace Movement, and the movement to abolish or curb the Committee itself.

The recent investigation of the Ku Klux Klan demonstrates the uncertainty and the vagueness of the Committee's mandate. After Chairman Walter insisted in 1961 that the Ku Klux Klan activities fell outside of its mandate the Committee decided in 1965 that it was empowered to investigate that organization. It cannot be doubted that only the personal opinions and private interests of the Committee members serve as a limit to the scope of the resolution.

If the scope of the Committee's power were confined to its mandate to investigate "propaganda" and "propaganda activities" such a mission would be too broad to permit a

limiting constitutional construction. But the Committee has long since scrapped its propaganda jurisdiction in favor of the policing of political association and expression which it was the purpose of the First Amendment to safeguard.

IX.

This case requires reversal because petitioner was denied the protections of *Watkins v. United States*, 354 U. S. 178, 208-209 requiring an explanation to the witness of the matter under inquiry and the pertinency of specific questions when they are otherwise obscure. Petitioner had excellent ground for believing that the purpose of the Committee as announced by the Chairman was to expose him and to break his union. He had a right to assume that all of the questions asked of him would be pertinent only to these purposes and indeed filed objections with the Committee protesting these announced purposes. His objections thus did not reflect an awareness of a contemplated legitimate subject under inquiry and he had a right to assume that all of the questions would be pertinent to himself and to an attempt to injure him and his union rather than to any other subject.

We think that the motion which petitioner filed at the outset of the hearing "triggered" the Committee's responsibility to set out clearly the claimed subject under inquiry. The Committee evidently thought so too, for it denied the motion at the end of the hearing "*nunc pro tunc*." But this delayed action could hardly cure the failure of the Committee to conform, at the outset of the hearing or at the time of the refusals to answer, to the requirements of *Watkins*.

X.

The subcommittee was required to overrule the objections stated in petitioner's motion objecting to the jurisdiction of the Committee, to apprise him that it had so acted and to require him to proceed. *Quinn v. United States*, 349 U. S. 155. Instead, as we have seen, the Committee waited until after all of the relevant questioning had concluded and then denied the motion. Nor was the direction requirement met by the fact that petitioner's refusals to answer specific questions were overruled and he was directed to answer those questions. The Committee had made it clear that it had no intention of ruling on the objections in the motion, and the objections to specific questions were not coextensive with the grounds urged in the motion.

ARGUMENT

I.

The indictment is insufficient because it fails to specify the subcommittee's authority to investigate the matter alleged to be under inquiry.

In *Russell v. United States*, 369 U. S. 749, the Court set aside petitioner's prior conviction because of the failure of the indictment to allege the subject under inquiry at the time of this interrogation. While the second indictment, under review here, repairs the omission in the prior indictment specifically ruled on by the Court, it nevertheless is fatally defective in that it fails to specify the authorization of the subcommittee to conduct an investigation into the subject matter allegedly under inquiry.

A. The Indictment Does Not Allege the Authority of the Subcommittee to Investigate the Matter Under Inquiry.

The inquiry which is involved in this case is stated in the indictment to have been "Communist Party activities within the field of labor" (R. 1). This is apparently a reference to a portion of the announcement of the subcommittee chairman at the hearing of the subject under inquiry *supra*, pp. 12-13). There is no allegation of the manner in which Chairman Moulder and his subcommittee acquired the authority to conduct the investigation.

The indictment sets forth the following sources for the subcommittee's authority to investigate the subject claimed in the indictment to be under inquiry (R. 1-2):

1. Legislative Reorganization Act of 1946, Section 121(q), 60 Stat. 828 and House Res. 5, 84th Congress. But the above statute and resolution merely empower the Committee and its subcommittee to investigate the extent of "Un-American propaganda activities" and the diffusion "of subversive and un-American propaganda." On their face they cannot be construed as an authorization to a subcommittee to probe into "Communist activities within the field of labor."
2. An appointment on February 9, 1955, by the Chairman of the Committee of a subcommittee to conduct the hearing and the fixing of a time at which it was to be held. But this is no substitute for an allegation that the Committee took some action which defined and delegated the subject matter to be probed.
3. The Committee resolution of January 20, 1955, clothing the Chairman with the power to appoint sub-

committees. This, too, brings us no farther in the search for an authorization.

4. An action by the Committee Chairman on February 18, 1955, continuing the hearing until February 28, 1955, and approved by the Committee February 23, 1955. Not only does this recital fail to clothe the subcommittee with authority but it suggests the desperation with which the prosecution futilely groped for something which might legitimize the claim of subcommittee authority.

B. An Investigation by a Subcommittee of the Committee Into a Subject More Restricted Than the Scope of the Enabling Resolution Must Be Authorized.

The statute and resolution referred to in the indictment (*supra*, p. 30) merely give the Committee or its subcommittees the power "to make from time to time investigations" into areas described by Rule XI.

Thus, the Committee's charter on the face of it contemplates discontinuous investigations falling within the area of the Committee's jurisdiction but not necessarily coextensive with it. In this respect it differs from its predecessor, the resolution creating the Special Committee on Un-American Activities (H. Res. 282, 75th Cong., 3rd Sess.) which was created "for the purpose of conducting an investigation" during the course of the 75th Congress^{*}

* The successive resolutions which continued the Special Committee, granted it "the same power and authority" as that set out in the original resolution. H. Res. 28, 76th Cong., 1st Sess.; H. Res. 321, 76th Cong., 3rd Sess.; H. Res. 90, 77th Cong., 1st Sess.; H. Res. 420, 77th Cong., 2nd Sess.; H. Res. 65, 78th Cong., 1st Sess. The last renewal was for a period of two years. See *infra* for discussion of earlier versions of the resolution.

and from its Senate counterpart, the Senate Internal Security Subcommittee of the Senate Internal Security Committee, which is authorized "to make a complete and continuing study and investigation" of the subjects within its jurisdiction. S. Res. 366 (81st Cong., 2nd Sess.).

Moreover, whatever limiting restraints on its jurisdiction may have originally been intended (see *infra* pp. 96-97), the fact is that the Committee, currently and at the time of the hearing in issue, construes its charter to give it investigative jurisdiction over an enormously broad area whose boundaries defy definition (see *infra* pp. 101-118).

In short, the Committee is no longer (either in form or in function) a special committee with jurisdiction to investigate a specific problem or subject and which ceases to operate when its mandate expires or its investigative assignment is exhausted. It is a permanent investigating committee, a unique entity, which is quite alien to the investigative process as it has evolved by statute and developed in Congress. In certain relevant respects the Committee resembles a regular standing committee of the Senate which may conduct "investigations into any matter within its jurisdiction."¹⁰ Such standing committees exercise investigative power by means of carefully drafted authorizations to subcommittees.¹¹ These authorizations

¹⁰ Legislative Reorganization Act of 1946, Section 134, 60 Stat. 831-832, 2 U. S. C. 190b. House committees, except for the Committee, do not have subpoena powers and investigations are authorized by special resolution.

¹¹ See, for example, Resolution of July 17, 1950, of the Senate Committee on the Armed Services, Sen. Doc. No. 230, 81st Cong., 2nd Sess.; Resolution of September 21, 1961 of the Senate Com-

are also the life blood of the Committee's investigative process. (See *infra* p. 37.)

The Committee did not purport in this case to commit the whole range of its powers to the subcommittee which conducted hearings and we doubt whether it could. Without

mittee on Armed Services, Hearings before the Special Preparedness Subcommittee, 87th Cong., 2nd Sess.

There are two notable differences between the investigations of Senate standing committees and those of the Committee. (1) Investigations by standing committees or their subcommittees are occasional and infrequent; they are called into being by some urgent problem as, for example, the investigation of invasions of privacy by government agencies by a Subcommittee of the Committee on the Judiciary, S. Res. 39, 89th Cong., 1st Sess. (2) Investigations other than those initiated by the Committee both in the Senate and the House are subject to highly intensive supervision both by parent committees and the Congress itself. Because Senate committees are not usually funded for investigations, after approval by a parent committee, authorization for a major investigation is submitted to the Senate for approval and for a special appropriation by means of a detailed resolution which defines the scope of the investigation, the amount of its budget, its duration and the date of a submission of a report. See, for example, S. Res. 20, 84th Cong., 1st Sess.; S. Res. 209, 84th Cong., 2nd Sess.; S. Res. 154, 84th Cong., 2nd Sess. (*Investigation of Federal Employees Security Program*). The authorizing resolutions are, after general approval, then referred to the Committee on Rules and Administration. See, for example, S. Rep. 21, 89th Cong., 1st Sess. (*Invasions of Privacy*). When funds are exhausted or the authorized duration ends, renewal must be sought.

Special committee investigations in the House are controlled in like fashion (see, for example, *United States v. Fields*, 6 F. R. D. 203 (D. C. D. C.); *United States v. Tobin*, 195 F. Supp. 588, reversed on other grounds, 306 F. 2d 270 (App. D. C.); and require both House and Rules Committee approval as well as that of the parent committee if a subcommittee is involved. But the Committee engages in a continuing investigative process which is rarely, if ever, supervised. It is funded through a generous appropriation at the beginning of the session; there is no control over a particular investigation. No report is required on the results of a particular investigation and even in the recent case of the Ku Klux Klan investigation (*infra* p. 114) when additional funds were requested the Committee did not seek approval of the investigation itself

a limiting authorization the Committee would be powerless to compel testimony. The language of the Committee's charter is too vague, broad and general to give precision to the subject under inquiry for purposes of pertinency and due process.¹² Thus, an authorization clearly defining the subject under inquiry is an imperative prerequisite to the exercise of the power of compulsory disclosure.¹³

The indictment, read in the light of the hearing, suggests that the subcommittee independently chose the subject under investigation. But a subcommittee of the Committee or of any other standing legislative committee with investigative power cannot decide on its own to investigate whatever subject strikes its fancy without authorization by Congress or its parent committee, or both. An agent, especially an agent of the Congress using the power to compel testimony in the area of the protected freedoms, cannot define its own authority. *Watkins, supra*.

(Cong. Rec., April 14, 1965, Daily Ed., pp. 7740, 7745). It is in the light of the norm of clearly-defined authorization and tight supervision of the investigative process that the Court must evaluate the Government's contention that the subcommittee's authority need not be pleaded or proved. Surely it cannot be that the Committee which takes as its investigative field the First Amendment freedoms is licensed to pursue a more irresponsible course than other Congressional bodies which confine themselves to the area of conduct.

¹² See *Watkins v. United States*, 354 U. S. 178 (1957); *Barenblatt v. United States*, 360 U. S. 109 (1959); *Deutch v. United States*, 367 U. S. 456 (1961), and *Wilkinson v. United States*, 365 U. S. 399 (1961).

¹³ While such a clearly expressed delegation is needed to redeem the inadequacies of the resolution for due process and pertinency purposes, it cannot serve to soften or cure the intimidating impact of the vague language of the resolution itself on First Amendment freedoms. See *infra* p. 101.

If members of the Committee (or any standing committee), armed with a designation as a subcommittee, were to hold hearings into a particular subject matter an otherwise unjustified refusal to respond to its questioning could not ground a contempt citation under Section 192. This is so because its authority and its mission must be delegated by a full committee. Just as the Committee (or any standing committee) functions as the agent of the Congress under the resolution which defines the terms of its agency, so the subcommittee is an agent of its parent committee. It lacks competence to proceed without a charter defining the terms of its mission.

Moreover, without such an authorization, an investigation by the Committee lacks a legislative purpose. As the Court held in *Watkins, supra*, at 201:

"It is the responsibility of the Congress in the first instance to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out the group's jurisdiction and purpose with sufficient particularity."

Since, as the Court has repeatedly held, the Committee's enabling resolution does not define its legislative mission with sufficient particularity, the Committee is required to refine it through its delegations in conformity with Congressional need. The Committee has a non-delegable responsibility to determine whether Congress would be aided by an investigation into a given subject, how long it should last, and when it should be timed so as to best serve the legislative function. For example, if the Committee hoped to influence the passage of legislation, it would time its in-

vestigation to harmonize with the legislative schedule of Congress.¹⁴

The parent Committee must decide, assuming that a proposed investigation would serve a legislative function, whether its scope falls within the Committee's basic charter.¹⁵ This is particularly true where, as here, the scope of the investigation is not coextensive with the Committee's enabling resolution, but is more limited. Indeed, in this case, the claimed subject of the hearing as recited in the indictment—"Communist Party activities in the field of labor"—is nowhere referred to in the enabling resolution or is even suggested by it.

Because the Committee has traditionally shunned its legislative responsibilities in favor of exposure, its procedures have never conformed to available models of legislative investigations, but it does pay some lip service to the requisite formalities. Thus, the Committee characteristically acts through subcommittees which are appointed by the Chairman (R. 9).¹⁶

The subcommittee's authorization for the investigation is the responsibility of the full Committee, a majority vote

¹⁴ No Congressional investigation leaves for the determination of the investigating panel alone such questions as schedule and duration of the investigation, the date when it must report or when or whether recommendations are to be submitted. See, for example, S. Res. 39, 81st Cong., 1st Sess. (*Invasions of Privacy*).

¹⁵ Where there is doubt as to committee's authority, clarification is sought in the appropriate branch of the Congress. See *Study of Administrative Practice and Procedure*, Congressional Record (Daily Edition) February 8, 1965, p. 2195. The Committee has sought clarification of its mandate not from Congress but from the Brookings Institution (*infra* p. 113).

¹⁶ The Internal Security Subcommittee of the Senate Judiciary Committee, in contrast, sits with its full membership or in a short quorum (R. 9).

of which must approve all "major" investigations. Rule 1 of the Committee's Rules, *Appendix*, p. 129.

These majority decisions, usually by resolution, are regarded by the Committee as so important that, for a number of years now, they have been recited at hearings and printed.¹⁷ And when such an authorization lapses at the end of a Congress before the investigation is completed, a renewing resolution is adopted to validate its continuance.¹⁸

¹⁷ See, for example, the opening statements made by the chairman at the following Committee hearings held from the 85th to the 88th Congress:

Investigation of Communist Activities in the Buffalo, N. Y., Area—Part 1, October 2, 1957;

Investigation of Communist Penetration of Communications Facilities—Part 1, July 17, 1957;

Investigation of Communism in the Metropolitan Music School, Inc., and Related Fields—Part 1, April 9, 1957;

Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area), Monday, February 10, 1958;

Investigation of Communist Activities in the New England Area—Part 1, Tuesday, March 18, 1958;

Communist Infiltration and Activities in Newark, N. J., September 3, 1958;

Passport Security—Part 1 (Testimony of Harry R. Bridges), April 21, 1959;

Communist Infiltration of Vital Industries and Current Communist Techniques in the Chicago, Ill., Area, May 5, 1959;

Western Section of the Southern California District of the Communist Party, Part 1, October 20, 1959;

Communist Outlets for the Distribution of Soviet Propaganda in the United States, Part 1, May 9, 1962;

Communist Activities in the Peace Movement, December 11, 1962.

¹⁸ See, for example, the opening statement at the Committee Hearings on *Assistance to Foreign Communist Governments*, March 6, 1963.

C. The Indictment Was Insufficient Because It Failed to Specify the Subcommittee's Authority.

Since delegation by the Committee to its subcommittee of its investigative authority in precise and clearly defined language is not a casual or optional aspect of its functioning, but is dictated by the Committee resolution, the pertinency requirement of the contempt statute, the due process provision of the Constitution, and by the nature and purpose of the legislative process itself, it is the cornerstone of the Government's case and should have been pleaded in the indictment. If the grand jury did not have before it *prima facie* evidence that the subcommittee was authorized to conduct the inquiry through a legally sufficient delegation, there was no basis for the return of the indictment and petitioner should not have been required to stand trial.

Here the jurisdiction of the subcommittee was seriously challenged at the hearing (*supra*, pp. 10-11). Petitioner's contention that the subcommittee had no legislative purpose was an important issue in the case and the indictment should have clarified it without requiring him to guess.

If, as the Government now contends, the investigation was (or must have been) authorized in an earlier Congress, the allegation of that fact would have required the indictment's dismissal on the ground of lapse of authority. On the face of it, House Resolution 5 of the 84th Congress, which implemented the Legislative Reorganization Act could hardly have authorized an inquiry allegedly begun before the Committee was activated and its membership elected. Besides, the House is not a continuing body, and its powers end at the conclusion of each Congress. An investigation beyond a term of Congress can no longer aid it in performing a legislative function. See *Journey v. Mac-*

Cracken, 294 U. S. 125, 141; *Anderson v. Dunn*, 6 Wheat. 204, 225, 230, 231; *McGrain v. Daugherty*, 273 U. S. 135, 171.

The prosecution obviously thought that it was necessary to allege facts indicating the subcommittee's authority and its failure to do so was due neither to choice¹⁹ nor chance (R. 133, 206). The patchwork charge against petitioner is plainly invalid and should have been summarily dismissed.

In *United States v. Lamont*, 18 F. R. D. 27 (S. D. N. Y.), aff'd, 236 F. 2d 312 (C. A. 2), the trial court had before it an indictment reciting that the Permanent Subcommittee on Investigations of the Committee on Government Operations was holding hearings pursuant to the Legislative Reorganization Act and various resolutions. No statement of subcommittee authority or scope was set forth in the indictment. The committee involved in that case was a Senate committee authorized to inquire into governmental activities to determine "its economy and efficiency." The trial court held that the provision in the Legislative Reorganization Act authorizing the Committee on Government Operations to function through subcommittees did not confer authority on the subcommittee to conduct the investigation under review.

In dismissing the indictment, Judge Weinfeld ruled (18 F. R. D. at 36):

"And if a defendant is to have a fair opportunity to defend himself he is entitled to be informed of the charge and to have the indictment specify that the committee whose authority he allegedly flouted was

¹⁹ In both the *Grumman* and *Silber* cases, *supra*, returned by the grand jury that indicted petitioner, the indictment specifically refers to the Committee delegation to the subcommittee.

duly authorized to conduct the inquiry—just as the indictment must plead every other essential element. An element of crime is an essential factor without which there is no crime. And if no authority was ever delegated to the Permanent Subcommittee by the parent committee or the Senate, there is no basis for prosecution under §192 no matter how contumacious a witness might have been.” [Footnote omitted]

In affirming Judge Weinfeld’s decision, Chief Judge Clark held (236 F. 2d at 315):

“It is of course the function of an indictment to set forth without unnecessary embroidery the essential facts constituting the offense and thus accurately acquaint the defendant with the specific crime with which he is charged. But an allegation for lack of which the prosecution must evidently and as a matter of law fail cannot be regarded as superfluous. * * * * *

“The deficiencies in the indictments now before me are thus quite fundamental and go far beyond the question whether defendants have been put on adequate notice. Rather the question is whether defendants are to be put on trial on an allegation which on its face charges no offense. * * * * *

“There is no allegation in the indictments here linking the inquiry conducted by the subcommittee to the grant of authority dispensed to its parent committee.”

The precise issue presented here—whether an indictment for contempt under Title 2, Section 192 in connection with a hearing involving the Committee must allege the authority of the panel delegated to conduct the investigation—was

carefully weighed by the Court of Appeals for the Second Circuit in *United States v. Seeger*, 303 F. 2d 478. The court ruled that a conviction for violation of Title 2, Section 192 cannot be sustained unless it appears from the indictment that the subcommittee was duly empowered to conduct the investigation and that the inquiry was within the scope of the grant of authority.

In that case, in contrast to this one, the indictment did recite the fact that the full committee had "directed that an investigation be conducted of Communist infiltration in the field of entertainment." 303 F. 2d, at 481, note 5. The court nevertheless held that "the indictment was defective because it had failed to properly allege the authority of the subcommittee to conduct the hearing in issue and to set forth the basis of that authority accurately" (*supra*, at 481).

Even prior to the Court's decision in the *Russell* case, indictments under Title 2, Section 192, in the Second, Sixth and Seventh circuits specified the authority of the subcommittee in allegations of pertinency. See *Russell*, *supra*, at note 7. And under the compulsion of the *Russell* case, indictments in the District of Columbia circuit under the contempt statute now specify the delegated authority of the subcommittee. See *supra*, p. 39.

We submit that the *Russell* case necessarily requires a statement of the authorized mission of the subcommittee. The *Russell* case ruled that the subject under inquiry must be set forth in the indictment to permit a determination of pertinency. This indictment's reference to a subject under inquiry is apparently to the announcement made by subcommittee Chairman Moulder at the commencement of the hearing. But such an announcement is hardly an authoritative statement of the subcommittee's delegation. Congress-

man Moulder's statement may perhaps have reflected a Committee authorization, or it may have been an improvisation. The questions propounded at the hearing may have been pertinent to the announced subject-matter but not to the subcommittee's authorization. The *Russell* case obviously requires that the indictment enlighten the defendant and the court not merely as to the matter under inquiry as announced at the hearing, but also as to the matter confided to the subcommittee in the first place. The former allegation might be adequate for guidance of the court and defendant in responding to the pertinency issue in the due process sense, but an allegation of the subcommittee's mission is indispensable to a resolution of the issue of statutory pertinency. See *Deutch v. United States*, 367 U. S. 456, 468.

It is plain that the "question under inquiry" referred to in the contempt statute is the subject described in the authorization for the hearing at which the questioning took place. When the contempt statute was passed, investigations were conducted only by *ad hoc* "special" committees and were coextensive with the full range of their authority.²⁰ Since then, both the Court²¹ and the House²² have concluded

²⁰ See Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 170-186.

²¹ *Barry v. United States, ex rel. Cunningham*, 279 U. S. 597, 613; see *Watkins v. United States*, *supra*, at 694 (dissenting opinion).

²² In 1955 the House, in adopting Rule XI (25) (i) providing that "the chairman at an investigative hearing shall announce in an opening statement the subject of the investigation" made clear its view that pertinence under the contempt statute is to be determined by the committee's authorization not by the opening statement. See H. Res. 151, 84th Cong., 1st Sess., 101 Cong. Rec. 3569.

that statutory pertinence is determined not by the opening statement but by the authorizing resolution, which in the case of the Committee, as we have seen, must be a mandate narrower in scope than Rule XI. As Judge Weinfeld pointed out in *United States v. Lamont*, 18 F. R. D., *supra* (at 35):

"There is an added reason why this element should be pleaded. With pertinency also an essential element, it is important for the defendant in preparing his defense to know the claimed source of authority since 'The initial step in determining the pertinency of the question is to ascertain the subject matter of the inquiry then being conducted by the subcommittee.' [*Bowers v. United States*, 92 U. S. App. D. C. 79, 202 F. 2d 447, 448.] Or, as stated by Mr. Justice Frankfurter in the *Rumely* case, the resolution under which the committee purports to act is the 'controlling charter' of its powers and governs 'its right to exact testimony.' [*United States v. Rumely*, 345 U. S. 41, 44, 73 S. Ct. 543, 545, 97 L. Ed. 770.] Since pertinency must be and has been pleaded, there is no logical reason why the authority of the committee should not likewise be pleaded."

See also *Sacher v. United States*, 356 U. S. 576, 577, and *United States v. Rumely*, 345 U. S. 41, 48.

Moreover, quite apart from questions of authorization and pertinency, allegations of subcommittee authority are necessary to permit an initial determination as to whether, in a hearing of restricted scope such as this, the authority exercised by the subcommittee conforms with the authority delegated. Just as full "committees are restricted to the

missions delegated to them" (*Watkins v. United States*, *supra*, at p. 206), so subcommittees are restricted to their delegated authority. Without a statement of what that authority is, a reviewing court is powerless to determine whether the matter alleged to have been under inquiry at the hearing falls within the subcommittee's mandate. See *United States v. Rumely*, 345 U. S. 41, 48.²³

Neither *United States v. Josephson*, 165 F. 2d 82, cert. denied, 333 U. S. 838, nor *Sacher v. United States*, 252 F. 2d 828 (App. D. C.), reversed on other grounds, 356 U. S. 576, is a persuasive precedent for the Government's position for the reasons set forth in *Seeger*, *supra*, at 483, note 12, 484, note 17. Besides, the committee involved in *Sacher*, the Internal Security Subcommittee of the Senate Judiciary Committee, considers itself a "special" committee engaged in a continuous investigation coextensive with its charter. The limited statement of purpose at the hearing made by the panel's chairman is in its view redundant and not binding on the subcommittee.²⁴ The court below, in approving the *Sacher* indictment, accepted a view of the In-

²³ In *United States v. Kamin*, 135 F. Supp. 382 and 136 F. Supp. 791 (D. C. Mass.), District Judge Aldrich denied a motion to dismiss a comparable indictment. The case went to trial, and Judge Aldrich dismissed some of the counts at the conclusion of the Government's case and directed a verdict of acquittal at the end of the trial, basing his rulings on the lack of pertinent relation between the questions put to the defendant at the subcommittee's hearing, and the matters into which the subcommittee was authorized to inquire. These defects would have been plainly disclosed by a properly-drawn indictment and "an unnecessary trial might have been averted had it been made clear in advance thereof that there was lacking an essential element of the crime charged, namely, that the inquiry was within the subcommittee's authority." *United States v. Lamont*, *supra*, at 315.

²⁴ See *Shelton v. United States*, 280 F. 2d 701 (App. D. C.), affirming 148 F. Supp. 928, reversed on other grounds, *Russell v. United States*, 369 U. S. 749; *United States v. Knowles*, 148 F.

ternal Security Subcommittee's charter which created a morass of pertinency problems until *Russell* discredited it, and which, in any event, has never been applicable to the Committee.

II.

There is no proof of the authority of the subcommittee to conduct the investigation.

Even if the proof could cure the defect in the indictment,²⁵ the Government's case would not be helped for there is no proof of the subcommittee's delegation. In addition to the four inadequate sources of subcommittee authority already discussed, the record indicates only that at the very first

Supp. 832, reversed on other grounds, 280 F. 2d 696 (App. D. C.); *Flaxer v. United States*, 235 F. 2d 821, 825 (App. D. C.), reversed on other grounds, 354 U. S. 929 and *Liveright v. United States*, 280 F. 2d 708, reversed on other grounds, 369 U. S. 749.

At the trial of the *Sacher* case, the subcommittee's counsel, when asked to state the subject under inquiry, identified it with Clause 3 of its basic resolution (*Sacher* Record p. 11): "The Committee was engaged in its continuing investigation into the scope, the extent, and the effect of subversive activity in the United States."

At the first *Shelton* trial (Record p. 23), subcommittee counsel testified "that the inquiry [was] being conducted pursuant to this resolution [Senate Res. 366], and it is not the case, that there was any smaller, more limited inquiry being conducted.

"This committee was conducting the inquiry for the purpose contained in the resolution and no lesser purpose so that, in that sense, the [question under inquiry] will be supplied by his reading the resolution."

In the first *Liveright* trial, subcommittee counsel testified (Record pp. 89-90, -93) "This investigation, as I say . . . is continuous and unchanging. The subject matter of the investigation at all times is the activities of the Communist organization as it operates within the United States . . . [It is] part of a continuing investigation . . . one entity which never terminates . . ."

²⁵ But see *Russell v. United States*, *supra*, at 769, and cases cited.

session of the Committee at which the hearing was discussed, a Committee member moved that petitioner and another witness "be subpoenaed to appear before a subcommittee of the Committee on Internal Security [*sic*] in open hearing at Fort Wayne, Indiana . . ." (*supra*, p. 6). This, no more than the remainder of the entry which records the appointment of a subcommittee, establishes the authority of the subcommittee to conduct a hearing on the subject claimed to be under inquiry—although it does strongly suggest that the Committee was more interested in interrogating petitioner than in giving legislative assistance to Congress. Since the Committee's entire file on the hearing was produced in court (*supra*), it is clear that there was no authorization for the investigation whatsoever.

Finally, the record contains testimony (*supra*, p. 16) that the Committee had commenced a pursuit of the Union some years prior to the hearing. This testimony, introduced to show "probable cause", cannot be converted into proof that the subcommittee which conducted the hearing in issue was properly authorized to do so.

The lack of proof of "preliminary control" (*Watkins, supra*, at 203) is fatal. The "clear determination" which is particularly required in order to avoid irresponsible investigative invasion of the protected freedoms was totally lacking (*Watkins, supra*, at 205).

In the *Seeger* case, *supra*, Judge Moore disagreed with the majority that the indictment was defective. But he found a fatal failure of proof of the subcommittee's authority (at 487):

"Seeger's refusal to answer did not occur before the Committee but only before a Subcommittee. For

this reason, Seeger argues that the authority of the subcommittee must be shown. Although creation of the Committee may be adequately alleged in the indictment, this fact does not dispense with the necessity of proving upon the trial the authority of the subcommittee before which Seeger refused to answer, commonly known as proof of the 'chain of authority.' The government offered a document dated June 8, 1955 (Exh. 7) authorizing the Clerk to 'proceed with the investigation of communist infiltration in the field of entertainment in New York.' Had Seeger appeared before the Clerk and refused to answer, it is more than questionable whether this could have been a Section 192 violation. Had the Clerk proceeded to appoint a subcommittee, his power so to do would have been equally doubtful. But neither of these events occurred.

"Somewhat in advance of trial, the government disclosed to Seeger a document (Exh. 8), dated July 27, 1955 (not mentioned in the indictment or in the government's bill of particulars), merely announcing a date for the hearings (August 15-18) and stating the names of the subcommittee appointed. Even the most liberal construction cannot transfer Exhibit 8 into a resolution of the Committee vesting its authority in a subcommittee and ratifying a previously appointed group of three. I would, therefore, hold that there had been a failure of proof of authority."

If the series of authorizing steps in the *Seeger* case were deemed to be inadequate to satisfy the Government's burden, then *a fortiori*, the proof in this case is inadequate.

III.

The conviction must be reversed because the hearing was held in violation of a Committee Rule.

Rule I of the Committee's Rules of Procedure provides that "No major investigation shall be initiated without approval of a majority of the Committee" (Appendix, p. 129). This Rule was in effect at the time of the hearing in this case (R. 88-89).

It can hardly be doubted that, for purposes of Rule I, this investigation was a "major" one.²⁶ It lasted three days and it is two hundred printed pages long (G. Exh. 12). The record affirmatively shows that there was no decision by a majority of the Committee or anyone else even to conduct a hearing into the subject under inquiry—let alone an investigation (*supra*, p. 9).

The Rule requires no elaborate exegesis. It is a familiar type of restraint on investigating committees to prevent abuse of power and harassment of witnesses through "one man rule" and to reduce political partisanship in the authorization of investigations.²⁷ The need for such restraint has been frequently noted.²⁸

²⁶ It seems plain from the face of the Rule that a "major investigation" is simply a probe which cannot be classified as a "preliminary inquiry," initiated by the staff.

²⁷ Compare Rule I, Senate Government Operations Committee; Rule 8, House Government Operations Committee; Rule 1, House Ways and Means Revenue Subcommittee. See also report of the Subcommittee on Rules, Senate Committee on Rules and Administration, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Session) p. 15; Hearings before the Subcommittee on Rules, "Rules of Procedure for Senate Investigating Committees" (83rd Congress, 2d Sess.), pp. 136, 141-142, 261) (testimony of Harold H. Velde) and 291 (testimony of Robert Kunzig).

²⁸ Footnote on following page.

The Rule is a modest attempt to reconcile power and responsibility. The Court has noted that especially in investigations touching on beliefs, expressions or associations "procedures which prevent the separation of power from responsibility" cannot be lightly disregarded. *Watkins v. United States*, 354 U. S. 178, 197, 215. The Rule should therefore have been meticulously observed. Since it was clearly violated the conviction cannot stand. See *Yellin v. United States*, 374 U. S. 109; *Shelton v. United States*, *supra*; *Liveright v. United States*, *supra*; *United States v. Grumman*, *supra*, ftn. 1 and *United States v. Silber*, *supra*, ftn. 1.

It cannot convincingly be maintained that prior approval can be inferred from the fact that the hearing was conducted or that petitioner was cited for contempt. The hearing was conducted only by three Committee members and the contempt citation supports no inference of prior approval. Compare *United States v. Rumely*, 345 U. S. 41, 47-48. Indeed even if there were in fact actual ratification of the investigation the position of the Government would not be improved. Petitioner had a right to have the full

²⁸ See *Report on Congressional Investigations* by Special Committee on Individual Rights of the American Bar Association (1954, p. 27):

"We are dealing with investigations by committees in the interests of Congress and the nation, not investigations by individuals. Abdication by the committee in favor of its chairman blurs this whole concept, encourages arbitrary action, and allows the public to blame Congress for the errors thus permitted with its authority and has proved to be undesirable. Committee responsibility is essential and it can be maintained only if the majority of the committee join in making the principal decisions."

See also Maslow "Fair Procedure in Congressional Investigations", 54 Col. L. R. 839, 856-857 (1954).

Committee responsibly determine in advance whether or not to conduct the investigation. And the invasion of his First Amendment rights could not be subject to ex post facto ratification. See *Shelton v. United States*, *supra* at 607; cf. *Christoffel v. United States*, 338 U. S. 84.

Nor could the requirements of the Rule be satisfied by the claim, asserted by the Government, that the hearing was a "continuing investigation" which must have been approved at some time in the past. Even if there were in fact earlier approval—none has been proved or even referred to—the requirement of the Rule would not be satisfied. As we have already noted (*supra*, pp. 38-39) hearings conducted prior to the first session of the Eighty-third Congress could not be continued into a new Congress without a fresh authorization. It is simply not the case as the Government seems to contend that congressional committees investigating subversion enjoy a license to conduct marathon non-stop probes based upon claimed authorization in the remote past. Only a renewed authorization could effectively continue an investigation, uncompleted at the close of a session of Congress. And, indeed, this is the very practice followed by the Committee (*supra*, p. 37).

IV.

The Committee's hearing was an exercise of the unconstitutional power of exposure.

It is our contention that the hearing which gave rise to the petitioner's contempt citation was called for reasons unrelated to the legislative process. In making this contention, we recognize that the investigative power is a broad one and is not confined to investigations in connection with a specific piece of legislation, proposed or enacted. A Congressional committee may investigate to determine whether a law needs amendment or is being properly enforced. Similarly, investigations may broadly probe the proper expenditure of public funds.

We do not contend that an otherwise proper exertion of the power to investigate is vitiated by the fact that harm to the witness incidentally results from such inquiry. Nor do we challenge the view that the courts must extend hospitality to asserted legislative justifications of the power to investigate. The doctrine of the separation of powers requires this. But this same doctrine also requires that the courts exercise the utmost vigilance in rejecting assertions of legislative power which are poorly disguised usurpations of the law-enforcement function.

**A. The Congressional Power of Investigation
Must Be Confined to the Limits of the
Legislative Process.**

The Constitution does not in express language give Congress the power to investigate. The power to investigate is an implied power. Thus, the power to investigate must be

in aid of the law-making power—not something separate and distinct from it. Our Government is one of limited and enumerated powers; the totality of the authority of Congress under Article I, Section 1, is but the authority to exercise the “legislative power granted herein.”

The Court long ago said of the investigatory power (*Kilbourn v. Thompson*, 103 U. S. 168, 191) that, “It will scarcely be contended by the most ardent advocate of this power in that respect that it is unlimited.” The exercise of the power must be confined to matters within the constitutional authority of Congress. Like other implied powers, it “is a means to an end and not the end itself” and “rests simply upon the implication that the right has been given to do that which is essential to the execution of some other and substantive authority expressly conferred.” *Marshall v. Gordon*, 243 U. S. 521, 541.

In 1927, in *McGrain v. Daugherty*, 273 U. S. 135, 173-174, the Court reiterated that the power to investigate is not a “general” one but must be exercised for a legislative purpose:

“... the two houses of Congress, in their separate relations, possess not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective; and . . . neither House is invested with ‘general’ power to inquire into private affairs and compel disclosures, but only with such limited power of inquiry as is shown to exist when the rule of constitutional interpretation just stated is rightly applied.”

In 1929, in *Sinclair v. United States*, 279 U. S. 263, 292, the Court repeated the central thesis of the *Kilbourn* case, *supra*, that the individual has "the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs," and cited with approval all of its historic rulings protecting personal and private rights, *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 478; *Harriman v. Interstate Commerce Commission*, 211 U. S. 407;²⁹ *United States v. Louisville & Nashville R. Co.*, 236 U. S. 318, 335; *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298, 305, 306.

The limitation on the power of Congress to conduct investigations was again emphasized by the Court in *Quinn v. United States*, 349 U. S. 155, 160-161:

"But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose [citing *McGrain v. Daugherty*, 273 U. S., at 173-174; *Kilbourn v. Thompson*, 103 U. S. 168, 190]. Nor does it extend to an area in which Congress is forbidden to legislate [citing *Compare United States v. Rumely*, 345 U. S. 41, 46]. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned

²⁹ It was concerning this case that Mr. Justice Holmes wrote to Harold J. Laski:

"The claim of the Interstate Commerce Commission in *I. C. C. v. Harriman*, 211 U. S. 407, made my blood * * * boil and it made my heart sick to think that they excited no general revolt. The soft period of culture that I spoke of the other day tended to oblivion of the fighting significance of guarantees." *Holmes-Laski Letters*, the Correspondence of Mr. Justice Holmes and Harold J. Laski, 1916-1935, 21.

under our Constitution to the Executive and the Judiciary [citing *Kilbourn v. Thompson*, 103 U. S. 168, 192-193]. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here."

In *Watkins v. United States*, *supra*, at 187, 200, the Court stated,

"There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress . . . Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible

.

" . . . We have no doubt that there is no congressional power to expose for the sake of exposure."

In *Barenblatt v. United States*, 360 U. S. 109, 133, the Court repeated:

"Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive."

These decisions, applying the principle of separation of powers³⁰ impose upon Congressional investigative power certain clear limitations:

1. The power of investigation is a limited one which is subject to judicial review.

2. A valid legislative purpose is indispensable to support a contempt conviction under Section 192.

3. Investigations by legislative committees are barred from encroaching on the areas of law enforcement which are assigned under our Constitution to the Executive and the Judiciary.³¹

There is no mystery about the nature of legislative power. It involves the establishment through duly enacted law of general standards of conduct. It is rule-making rather than specification. *United States v. Brown*, *supra*, at 446, 463. It correspondingly involves, on the investigative level, the exploration and evaluation of a sufficient number of representative examples of a subject or an evil so as to permit a determination whether a rule of general applicability is warranted. It deals with broad patterns not with individual behavior; it seeks information about problems and does not determine the guilt or innocence of individuals. It is *ad hoc* and not continuous, selective and not exhaustive.

The prosecution of individuals for claimed violations of legislatively enacted rules is the duty of law-enforce-

³⁰ The history and importance of this principle was discussed by the Court in *United States v. Brown*, 381 U. S. 437.

³¹ Two other limitations on the investigative power, discussed below, are the Bill of Attainder clause and the freedoms guaranteed by the Bill of Rights.

ment officers of the Executive branch and the determination of individual guilt or innocence is the province of the Judiciary. *Fletcher v. Peck*, 6 Cranch, 87, 136. Law enforcement and judicial institutions characteristically deal directly with individual cases and not with problems, with the specific and not with the general. Unlike an investigative committee, a law-enforcement agency deals with every instance and not with a representative selection. Courts too are exhaustive and not selective and the nature of their responsibilities gives them institutional continuity which is denied to an investigating committee because of its legislative character.

It hardly need be argued that a committee of Congress can not by itself determine that a standard of conduct (membership, present or past, in the Communist Party) is reprehensible and then proceed to apply sanctions to those it finds guilty ranging from defamation to occupational disqualification. Apart from the fact that such a practice would, considered as a "legislative" activity constitute an attainder mechanism (see *infra*, p. 86), it would plainly usurp Executive and Judicial functions in gross violation of the separation of powers principle.

Such a practice would not only involve a probe into private affairs unrelated to a valid legislative purpose (*McGrain v. Daugherty*, *supra* at 173-174, *Kilbourn v. Thompson*, *supra* at 190; *Sinclair v. United States*, 287 U. S. 263, 292) but would confuse the power to investigate with "the powers of law-enforcement" which "are assigned under our Constitution to the Executive and the Judiciary" (*Quinn*, *supra* at 160-161), would constitute an inquiry "into matters which are within the exclusive province of one of the other branches of government" (*Barenblatt*, *supra* at 133)

and would be illegal because it sought "to expose for the sake of exposure" (*Watkins, supra* at 187, 200).

These limitations are not in serious dispute. What is less clear is the nature of proof which is necessary to establish either the absence of a valid legislative purpose or the encroachment by a legislative investigating committee on the jurisdiction of the other two branches of government.

In *Watkins, supra*, the Court, while condemning exposure for its own sake stated (*supra*, at 200):

"But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served."

In *Barenblatt (supra* at 132), the Court in rejecting an "exposure" contention said:

"So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power."

Similarly in *Wilkinson v. United States*, 365 U. S. 399, 412, the Court noted that "it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner."

But in the above cases the Court found that a legislative subject matter was involved in the investigation. Certainly it did not hold that Congressional investigations are immune

from exposure attacks or that a mere claim of legislative purpose is sufficient to overcome all proof to the contrary.

In this and other cases, the cry "motive" has been talismanically raised to repel claims of exposure. It is vital therefore to define precisely what is precluded from judicial inquiry and what is not in a determination of legislative purpose.

The issue may be illuminated by a reference to the oleomargarine tax case (*McCray v. United States*, 195 U. S. 27) upon which the Court relied in *Barenblatt*. The *McCray* Court properly rejected contentions that invalid motives tainted the statute. But, suppose a Senate Finance Committee at the turn of the century held hearings ostensibly to determine the feasibility of a tax in which oleomargarine manufacturers were systematically defamed and held up to ridicule, the community of hostile dairymen invited to work its will on them, and the manufacturers told that the aim of the committee was to destroy their markets and put them out of business. Suppose further that the committee compiled lists of past, proved and suspected oleomargarine manufacturers which it circulated among dairymen in order to stimulate a boycott. It need hardly be argued that the *McCray* Court (which in its tax decision relied heavily on the *Kilbourn* case) would have refused to punish recalcitrant oleomargarine manufacturers by contempt proceedings because the committee had departed from a valid legislative purpose and encroached on the functions of the Executive and the Judiciary.

When Congress has enacted legislation which falls within its constitutional competence, a presumption arises that its purpose was a valid legislative one. Courts have no

concern with private aims, ends or motives."²² It is the legislative act itself encased in the armor of the legislative process—committee reports, debates, bicamerality and executive approval—which commands judicial acceptance.

In the case of legislative investigation, the same general principle applies. Once a legislative subject matter within the Congressional competence is established, a presumption of valid legislative purpose likewise arises.²³ But the process of determining a legislative subject matter is more complex and elusive in the case of investigations than in the case of a statute. We are dealing here with the amorphous area of exploration by an agent of one branch of the legislature whether or not to act rather than with a formal act of legislation by the legislature as a whole. In such a situation, there is no sure guide to a determination of the subject of a legislative inquiry and hence to the validity of the legislative purpose.

In determining this question of fact, a court may—and frequently in the case of the Committee must (see *Watkins, supra*; *Barenblatt, supra*; *Wilkinson, supra*)—scrutinize all available sources, resolutions, statements of committee and subcommittee chairmen, the nature of the interrogation, etc., to identify the real subject matter of the inquiry. Courts, we submit, are under a duty to examine with rigor and independence a claim that a legislatively permissible subject is being probed which does not encroach on other branches of

²² *Arizona v. California*, 283 U. S. 423, 455; *McCray v. United States*, *supra* at 53-59.

²³ This presumption is rebuttable in a contempt proceeding, like any other presumption in a criminal case. *Infra*, p. 65.

government. This duty is created by the principle of separation of powers," by the protection against attainders, by Section 192" and by due process of law."

If courts, in ironically misplaced deference to the principle of separation of powers, shrink from the discharge of this duty then there is no protection at all against one of the abuses most feared by the framers of the Constitution—legislative justice. See *United States v. Brown, supra*.

²⁴ As the *Kilbourn* Court put it (*supra*): "If (the Houses of Congress) are proceeding in a matter beyond their legitimate cognizance, we are of opinion that this can be shown . . ."

²⁵ See the legislative history of the 1857 contempt statute, recited in *Russell, supra* at 757-758, and in particular the following comment by Senator Bayard made in answer to an objection to the broad language of the bill by Senator Seward (" . . . it may be a subject over which Congress has no jurisdiction. It may be foreign from all the provisions of the Constitution . . ."):

"I am aware that legislative bodies have transcended their powers—that under the influence of passion and political excitement they have very often invaded the rights of individuals, and may have invaded the rights of coordinate branches of the Government; but if our institutions are to last, there can be no greater safeguard than will result from transferring that which now stands on an indefinite power (the punishment as well as the offense resting in the breast of either House) from Congress to the courts of justice. When a case of this kind comes before a court, will not the first inquiry be, have Congress jurisdiction of the subject-matter?—has the House which undertakes to inquire, jurisdiction of the subject? If they have not, the whole proceedings are *coram non jure* and void, and the party cannot be held liable under indictment . . ."

²⁶ The classic case is *Burnham v. Morrissey*, 14 Gray (Mass.) 221 (1859):

"The [Massachusetts] House of Representatives is not the final judge of its own power and privilege in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court."

**B. This Is a Case of Exposure for the
Sake of Exposure.**

The record here, in contrast to cases such as *Barenblatt*, *Williamson* and *Braden*, precludes a deference to the statement of purpose of the subcommittee Chairman for the following reasons:

1. There was no valid delegation to the subcommittee to conduct the investigation.
2. The hearing was initiated not by an authorizing resolution, but by a motion by a Committee member that petitioner be subpoenaed to appear not before the Committee, but before the "Committee on Internal Security" (*supra*, p. 6).
3. The investigation violated a Committee rule designed to prevent abuse of power (*supra*, p. 48).

Under these circumstances, there can be no presumption or inference of legitimate purpose that can be drawn from the hearing.³⁷ Indeed, it cannot be claimed that the hearing was an exercise of the legislative function at all.

Without a legislative purpose, the proceedings cannot support a contempt conviction under Section 192. Art. I, Sec. 1 of the Constitution. *Kilbourn v. Thompson*, *supra* at 173-174; *Sinclair v. United States*, *supra* at 292.

But there is more here than the negation of the premises of a valid legislative endeavor. There is a wealth of

³⁷ See *United States v. Lamont*, *supra*, at 36:

"Nor is it an answer to suggest that a presumption of regularity supports the committee's purported authority to act since that presumption presupposes a prior grant of authority."

affirmative evidence—unprecedented, we believe, in any of the decided cases in this area—that the Committee and its Chairman intended to punish petitioner as a person, to force him out of the Union's leadership and to break the Union. The following facts—all of them uncontradicted—overwhelmingly establish the exposure purpose of the hearing:

(1) This was the first hearing conducted pursuant to a "new plan" under which known or suspected "subversives" would be given "a chance in the full glare of publicity" to deny charges against them or "to take shelter behind constitutional amendments," so that they could be "exposed before their neighbors and fellow workers" with a view to insuring that "loyal Americans who work with them will do the rest of the job." The purpose of these hearings, Representative Walter explained, would be "to demonstrate that [the witnesses] are part of a foreign conspiracy" (*supra*, p. 5).²²

(2) The implementation of this new plan is reflected in the fact that the very first entry in the Committee's file dealing with this case is a decision—not conduct a legislative investigation but to subpoena petitioner (*supra*, at p. 6).

²² Chairman Walter could hardly have thought that this "new plan" had a legislative significance. On August 26, 1955, he observed, "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." U. S. News and World Report, August 26, 1955, p. 7; quoted in Judge Edgerton's dissenting opinion in *Watkins v. United States*, 233 F. 2d 681, 693 (App. D. C.). The Committee knows that its exposure objectives cannot be validly achieved through legislation (R. 170); *Barsky v. United States*, 167 F. 2d 241, 256 (App. D. C., dissenting opinion).

(3) On the very day the Committee decided to subpoena petitioner, February 9, 1955, the Committee Chairman notified a newspaper in Fort Wayne, where petitioner's union was facing a representation election that it would be issued (*supra*, at p. 7).

(4) On another occasion, before the service of the second subpoena, a local newspaper in St. Joseph, Michigan, where petitioner's union was facing a representation election was notified by the Committee Chairman that a subpoena had been issued (*supra*, at pp. 9-10)."

(5) Prior to the hearing, the Chairman held a public session in response to a request for a postponement at which he told the press that the Committee wanted to break the Union "because we do not feel it is good for the United States." The subcommittee Chairman was present and contributed similar observations (*supra*, at p. 8).

(6) The personnel manager of one plant in which a representation election involving the Union was scheduled announced three days before the subpoena was actually issued that petitioner would be subpoenaed—the same personnel manager who on an earlier occasion had obtained access to petitioner's dossier from the Committee's files and made it available to his supervisory staff, their friends and neighbors (*supra*, at pp. 7, 16-17).

(7) In the interview given to the St. Joseph, Michigan, newspaper before the service of a subpoena, Chairman Walter stated that the Committee intended to show that

"It is worth noting that a 1961 revision of the Committee's Rules provides (Rule XVI) that, "No member of the Committee or staff shall make public the name of any witness subpoenaed before the Committee or Subcommittee prior to the date of his appearance."

petitioner and another witness connected with the Union were "card carrying Communists" and that "the rest is up to the community" (*supra*, at pp. 9-10). This was plainly an implementation of the "new plan" to expose witnesses so that "loyal Americans who work with them will do the rest of the job" (*supra*, at p. 5).

(8) The Fort Wayne newspaper was also told prior to the hearing, through its Washington correspondent that the Committee was interested in breaking the Union because its continued existence was not good for the country. The substance of this objective was repeated by the chairman on the floor of the House (*supra*, at pp. 8-9).

(9) When the Chairman's exposure campaign was complained of at the hearing by motion, the subcommittee made no effort to deny the facts or disavow that its objective was exposure (*supra*, at pp. 11-12).

(10) At the hearing the subcommittee Chairman stated that the Committee was dedicated "to expose Communistic activities" and that it was its "intention and purpose to point out to the public, as well as union members, Communist domination or Communist activities wherever it may exist" (*supra*, p. 12; R. 228). Another subcommittee member (Congressman Scherer) proclaimed that "It is the job of this Committee to expose Communists" (*Ibid.*) and "to help [unions] relieve themselves of Communist domination" (*Ibid.*). The third subcommittee member (Congressman Doyle) informed a witness at the hearing that the "Committee's legislative assignment" was "to break up . . . if we can, any Communist Party controls or efforts to control either your union or any other union" (*Ibid.*).

(11) The Committee had no probable cause to believe that petitioner would supply it with information. Despite Chairman Walter's announced intention to demonstrate that the witness was a "card carrying Communist," no evidence was adduced at the hearing or the trial to this effect. Mr. Tavenner's testimony at the trial shows only that the Committee called the witness because he was an officer of the Union, but no testimony was offered that the Committee had evidence that he had been accused of Communism (*supra*, p. 16).

(12) The retributive and prosecutorial purpose of the hearing, finally, is illuminated by the Committee's highly personalized exploration of petitioner's past (*supra*, p. 13), the attack on his counsel (R. 223-225, 225-227, 288), the personal and ideological grilling of a physician who had furnished a medical excuse to a witness (R. 395-400), and the hectoring of a witness because he considered the Court a safer guide than the Committee and refused to confirm the Committee's notions of how his local union was run or to acquiesce in its insistence that Communists should not be tolerated in employment or union office (R. 227-241).

The subcommittee Chairman's meager and unparticularized announcement about the alleged purpose of the hearing (*supra*, p. 12) can hardly overcome the massive evidence of an improper purpose or give rise to an inference that the repeated official acts and statements indicating an exposure purpose were expressions of "motive" incidental to some legitimate endeavor.⁴⁰

The Government has sought to minimize the significance of the pre-hearing evidence of an exposure purpose by ap-

⁴⁰ Even if the subcommittee Chairman's bare statement of the matter under inquiry created a presumption, it is not irrebuttable. *United States v. Cross*, 170 F. Supp. 303, 308-309 (D. C. D. C.).

plying to the investigative process the wholly inapplicable criteria of statutory interpretation. But, as we have pointed out, the ends of an investigation are determined in far less rigid and formalized ways than those of a statute. What cannot be disputed is the key role of the committee Chairman in determining the goals of legislative investigations.

Under the Rules of the Committee (Rule III), the Chairman is responsible for the issuance of subpoenas. He created the subcommittee (*supra*, p. 30). Chairman Walter considered himself the Committee's responsible spokesman. *Yellin v. United States, supra*, and *Yellin Record*, pp. 145-154. Under the Rules of the House, the Chairman is regarded as the responsible head of the Committee. See Jefferson's *Manual*, Sections 317, 343, 415, 418, 672. To ignore the course of statements and acts by Chairman Walter in determining whether or not the Committee had a legislative purpose would mutilate the realities. The entire environment of the investigative process makes it glaringly clear that the Chairman of an investigating committee is *the* authoritative voice in determining its purpose and scope.

The purposes expressed by the Chairman to defame and injure petitioner and to break the Union were not merely left to the hearing. Here is a case in which even before the hearing began the Committee's power was used to accomplish an illegal purpose.⁴¹

⁴¹ Contrary to the Government's contention that the newspaper clippings upon which we rely are ineffective to prove purpose, we assert that they are peculiarly probative of exposure. If Congressman Walter had merely issued a press release stating that "we" intend to break the Union and to demonstrate that petitioner is a card-carrying Communist upon whom the community is invited to take reprisal, such a press release would be a powerful demon-

The hearing broadened the Committee's punitive purpose to include the purge of all suspected union leaders (not just petitioner) from all Committee-proscribed labor organizations (not just the Union). Indeed, it is impossible to read the hearing record without becoming aware that the premise for the hearing is a statute—passed by the Committee but not by Congress—which condemns certain unions as subversive and seeks a purge of their leadership through exposure sanctions. The “probable cause” which brought petitioner to the witness stand was not his possession of legislatively useful information but his suspected violation of the Committee's home-made statute.⁴²

Chairman Walter's “new plan”, the pre-hearing attacks on petitioner and the Union and the hearing itself, these

stration of the Committee's purpose. Here, the Chairman went beyond issuing a press release; he instigated the actual publication of the same information in newspapers in the very communities where the injury was to be done. In short, the newspaper clippings are not only evidence of an-illegitimate purpose, but constitute an actual attempt to carry out that purpose.

⁴² For a recent and highly revealing version of this invented statute, see the statement of Committee Chairman Willis on the difference between the way the Committee enforces the “Communist infiltration” (“we follow these Communists wherever they go”) and “Communist control” (“the organization as such” is investigated) portions of the statute. The fact that Congress in fact has enacted a statute dealing with these matters is no embarrassment to the Committee but rather a “guide”, a safeguard which should allay the fears of critics! Cong. Rec. April 14, 1965 (Daily Ed.) p. 7745. It is as though the House Labor and Education Committee proceeded to expose employers who engage in unfair labor practices and defended its unorthodox investigative endeavors on the ground that after all it had the guide of the National Labor Relations Act to keep it from straying.

Another unintentional admission of the exposure charges of its critics is the Committee's insistence that it never asks a witness whether he is a Communist unless it has solid evidence in its files that he is in fact a Communist. Cong. Rec. January 27, 1966 (Daily Ed.) pp. 1274-1275.

are all parts of a coherent and mutually supporting program for the enforcement of this statute. But the Committee could not use its power to "enact" such a statute, to "prosecute" those thought to be in violation of it and to pronounce them guilty. See *supra*, p. 56.

The Committee not only encroached on the proper spheres of the Executive and the Judiciary but the statute which it "passed" competed with one actually enacted by Congress.

By the terms of the Communist Control Act of 1954, Congress delegated to the Attorney General the task of investigating unions and of proceeding before the Subversive Activities Control Board against those alleged to be dominated or infiltrated by Communists. Communist Control Act of 1954, P. L. 637, 66 Stat. 775, 50 USCA 781, 792(a). If the Union's leadership made it a threat to security, the investigative resources of the Attorney General were available to bring it to book.⁴⁸ The Committee held a hearing not to guide Congress in the discharge of its responsibilities in this legislatively exhausted area, but only to enable it more effectively to accomplish its punitive purpose.

Even if the overwhelming evidence to the contrary is ignored, and a faint gleam of legislative purpose is discerned, it can hardly be argued—in view of the statute passed in August 1954, only six months prior to the hearing—that the need of Congress was so pressing as to justify

⁴⁸ Indeed, a petition was filed against the Union under the statute on December 20, 1955. After a lengthy hearing the Department of Justice moved to dismiss because it was unable to establish the allegations of the petition and the Subversive Activities Control Board dismissed the petition on March 30, 1959. See *Rogers v. United Electrical, Radio and Machine Workers of America*, Docket No. 119-56, Subversive Activities Control Board.

the invasion of the right of privacy." In *Barenblatt* (*supra*, at 112) the Court noted that, "The power [of inquiry] and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions." And in *Watkins* the Court in repeating the *Kilbourn* ruling making the investigation of private affairs conditional on the existence of a legislative purpose (*Watkins*, *supra*, at 198) did not automatically justify an invasion of individual privacy. The opinion makes it clear (*ibid.*) that the permissibility of such invasions turns on "the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness." "

In any event this is not a case of a mere abuse of a valid power on the one hand and an invasion of privacy on the other. The Court is faced here with an unmistakable usurpation of power. The fact that the questions in issue could have been asked pursuant to a valid purpose is irrelevant. As was pointed out in *United States v. Icardi*, 140 F. Supp. 383, 388 (D. C.), "If the committee is not pursuing a *bona fide* legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal' even though that very testimony is relevant to a matter that could be the subject of a valid legislative investigation."

If the Court's strictures (*supra*, pp. 53-55) against investigative exposure for exposure's sake are not to be reduced to empty verbalisms then the ruling below that this was not an exposure hearing cannot stand. Not only is there multi-faceted evidence of improper purpose but

"With petitioner's First Amendment rights we deal below.

"See Redlich, "Rights of Witnesses Before Congressional Committees", 36 N. Y. U. Law Rev. 1126, 1148.

the presumption which normally shelters a legislative enterprise was overcome, as we have seen, in the very cradle of this "investigation." And, there is present here the evidence "that the Subcommittee was attempting to pillory witnesses" found to be lacking in *Barenblatt* (360 U. S. at 134); cf. *Braden v. United States*, 365 U. S. 431; *Wilkinson v. United States*, *supra*. If petitioner's showing in this case falls short of what is required, then we doubt whether an exposure purpose can be shown in any case, or indeed whether the purpose of the Committee can be viewed as a question of fact at all.

V.

The Committee's authorizing resolution is invalid because as construed and applied by the Committee it exceeds the legislative power and violates the principle of separation of powers.

While the Committee revealed its exposure purpose here with extraordinary clarity, the Committee's use of exposure as an investigative goal is hardly peculiar to this case. Indeed the Committee has throughout its existence construed its authorizing resolution as an exposure mandate. The transformation of its jurisdiction from investigation is apparent from masses of evidence which have accumulated during the twenty-eight years of the Committee's functions—twenty-one of them as a standing committee—and not only reinforces our contention that exposure activated the hearing but independently condemns the authorizing resolution itself as an unconstitutional usurpation of power.

The fact is that the Committee, in theory a servant of Congress, has made itself master of its own house. It has

become a fourth branch of government, exercising a miscellany of powers: legislative, in that it sets permissible standards of political behavior; executive, in that it charges violations of these standards, and judicial, in that it passes judgment on the guilty and "clears" the innocent.

The Committee has openly proclaimed that its special, unique function is exposure⁴⁶—although in recent years it has been careful to recite for the record a claimed legislative purpose at the beginning of its hearings. The way in which the Committee has distorted the investigative process and usurped governmental powers in pursuance of its exposure purposes may be gleaned from the following summary of its method of operation:

1. Although the Committee is both a standing and an investigating committee, few bills are referred to it, and its legislative work is minimal. Of the 12,829 bills introduced in the House in the 88th Congress, only 32 were referred to the Committee. And of these 32 eighteen were similar or identical.⁴⁷ Similarly, of the 11,856 bills introduced in the House in 1965, thirteen bills (of which ten were identical)⁴⁸ were referred to the Committee. When bills are referred to the Committee, legislative hearings rarely re-

⁴⁶ See *Barenblatt v. United States* (*supra*, at 156, note 6, 163-166; dissenting opinion); R. 169, 170, 171, 172, 173, 174, 175, 178, 179.

⁴⁷ Cong. Rec. (Daily Ed.) April 13, 1965, p. 7719.

⁴⁸ Cong. Rec. (Daily Ed.) Jan. 27, 1966, p. 1273; in the 83rd Congress, of the 10,285 bills referred to all House committees, four were referred to the Committee; in the 84th, of 12,456 bills referred to all House committees, only one was referred to the Committee and in the 85th, 13,521 bills were referred to House committees of which five were referred to the Committee. See Library of Congress, Legislative Reference Service, Digest of Public Bills, Final Issues for 1953-1958, inclusive.

sult: From 1950 to 1959 the Committee did not hold a single hearing on any specific bill.⁴⁹ It is hardly surprising that throughout its entire existence, the Committee is responsible for only three pieces of legislation. They are, the Internal Security of 1950, an amendment to it correcting an error made by the Committee, and a 1964 authorizing summary dismissal of employees of the National Security Agency. Cong. Rec. (Daily Ed.) April 13, 1965, p. 7719.

2. While the Committee is legislatively inactive, it is investigatively hyperactive. In 1965 the Committee staff director reported that it had published "more than 500 volumes of hearings, reports and consultations."⁵⁰ The enormous imbalance between the Committee's investigative and legislative activity supplies a revealing clue to the workings of the Committee.

3. The meager input of bills to the Committee and the limited output of legislation reflect the obvious fact that truly "legislative" problems falling within the Committee's jurisdiction are relatively rare; the members of the House have far greater need for the legislative assistance of the Judiciary and Agriculture Committees for example because these committees deal with problems which are more numerous, recurrent and important. The Committee thus "investigates" far more intensively than the latter committees not because there is a greater Congressional need for its investigative services. The Committee's investigative hyperactivity results from the fact that it has abandoned its role as a legislative aide of Congress and independently

⁴⁹ Cong. Rec. (Daily Ed.) April 13, 1965, p. 7719.

⁵⁰ Cong. Rec. (Daily Ed.) February 8, 1965, p. 2088.

entered a field, exposure, which is not confined to the limitations of the Congressional investigative function.

4. The key to the Committee's exposure functions is its concern with people rather than problems.⁵¹ An investigation comes into being not because of the need to probe a particular issue or problem but because names of past, present or suspected Communists have been made known to it by an ex-FBI informer who has "surfaced" or a recanted Communist.⁵² Though in form a hearing, Committee proceedings are disguised trials in which the "friendly" informer witness is the accuser and the unfriendly witness the defendant.

5. Whenever the Committee acquires a sufficient supply of names, it holds a hearing. Whether the hearing is designated by an "area", "organization" or "subject matter" title the hearing itself concentrates on establishing the politically discreditable characteristics of the witness.

⁵¹ R. 142, 143-144, 149-150, 151-152, 154, 155, 157, 157-158, 160, 161, 165, 166.

⁵² See, for example, *Newark Area* (1955) 993 (we will refer in this abbreviated way throughout to Committee hearings):

"During the course of the investigation by our trained and experienced staff, prior to these Newark hearings, the committee has been most fortunate in obtaining cooperation and sworn testimony in executive session of an individual who for many years served as undercover agent in the Newark area for the Federal Bureau of Investigation.

"During the course of this person's service with the Department of Justice he was able to ascertain the identity of a great many individuals who were active in the Communist Party in Newark and the Newark area."

"This witness alone identified approximately 75 Newark individuals who were active in . . . the Communist Party during the witness' period of service to our Government as an FBI agent."

It is thus the availability of potential exposable witnesses alone that is the measure of the Committee's investigative productivity. The Committee of course could hold hearings without using its subpoena power in order to investigate the factual disclosures of friendly witnesses—but it rarely does so.

6. The need for a constant flow of names accounts for the Committee's curious exhaustiveness. Everyone—butter, baker and candlestick maker, preachers and housewives—suspected by the Committee must be summoned. In some instances, the exposure process has victimized the same individual a number of times. Those not yet subpoenaed live in fear and await their turn. It is this exhaustiveness which so clearly reveals the Committee's usurpation of law-enforcement functions (see *supra*, pp. 55-56). And of course the fact that an individual's political associations automatically make him exposable is hardly an assurance that he possesses information which may be of use to Congress.

7. The imperatives of the Committee's exposure function drive it into a quest for witnesses with Left ties in the ever remote past. The Committee tirelessly hunts down ex-Communists and depression radicals to swell the number of exposable witnesses.³³ But again these are questionable sources of information about current Communist Party activities.

³³ No fewer than ten witnesses called to Committee hearings during the 85th Congress had left the Communist Party prior to 1941. *Hearings*, 414 ff, 762 ff, 824 ff, 833 ff, 880 ff, 1410 ff, 1432 ff, 1448 ff, 1445 ff, 1461 ff.

8. Because names are the Committee's life-blood, it inevitably tries to force the would-be co-operative witness to name others. Witnesses who plead with the Committee to waive this requirement so that they can be "cleared" as friendly are invariably refused even though they promise full disclosure of their own activities. The unwillingness to act as an informer thus compels the witness to refuse to co-operate altogether.⁵³ This is no great loss to the Committee. The facts which the witness offers to share about his own activities are not important to the Committee, even though it might be to Congress. But the names are vital to the exposure process.

9. More than eighty percent of the "testimony" before the Committee consists of the refusals of witnesses to testify and supporting explanations and pleas.⁵⁴ The Committee knows (or can easily find out) whether or not a prospective witness will testify. But the Committee cherishes silent witnesses; they are precisely the ones who must be exposed and punished. The compulsory disclosure of the witness' politics is not a means to a disclosure of other facts, but an end in itself. It is a destination, not a journey. Thus

⁵³ *Chicago Area* (1959) 622-631; *Philadelphia Area* (1958) 2973-2981; *Philadelphia Area* (1954) 3944; *Radiation Laboratory* (1950) 3428; *Deutch v. United States, supra*; *Watkins v. United States, supra*; *Silber v. United States, supra*; Emerson and Haber, *Political and Civil Rights in the United States* (2d Ed.) 737.

⁵⁴ See note 58, *infra*. At every hearing there are many more unfriendly witnesses than cooperative ones. In the 84th Congress, the Committee called a total of 529 witnesses. Of these, 464 were unfriendly and gave the Committee no information. The remainder were either Government officials (15), former FBI agents (22) or persons who had left the Communist Party (28). In the 85th Congress, of a total of 402 witnesses, 331 were unfriendly. The friendly witnesses included 11 former undercover agents and 18 ex-Communists.

when recalcitrant witnesses recant and reappear before the Committee (see *Barenblatt, supra*, at 156-157 dissenting opinion) they are, for the most part, asked not factual questions but are required to name others.⁵⁵

10. It can be seen from the above that exposure is actually parasitic on the Congressional investigation function, that it pursues a course that frustrates a legitimate Congressional need for useful facts. And the facts which do seep through the hearings are repeated over and over again. This is so because the witnesses, who have after all shared the same experience⁵⁶ give the same testimony (and submit the same documents) about claimed the subjects of Committee concern—Communist Party structure and Communist “fronts”, activities in education, labor and youth, etc.⁵⁷ All that changes are the lists of names. And repetition is compounded when the friendly witness is put on the stand for repeat performances in order to ventilate additional names or at a hearing in another city.⁵⁸ The few

⁵⁵ For six examples of this see Beck, *Contempt of Congress* (1959), p. 184, note 6.

⁵⁶ Not infrequently they name one another. See, for example, *Barenblatt, supra*, note 57 (dissenting opinion) and *Buffalo Area* (1964) 1561.

⁵⁷ A noteworthy aspect of the exposure system is the fact that the testimony adduced in the hearings about the subjects under inquiry invariably comes from ex-Communists under pressure, chronic witnesses and informers, dubious sources of fact for the aid of Congress. For all of the voluminous published hearings of which the Committee boasts (*supra*), the Committee has never troubled to make available to Congress a truly objective body of facts relating to the problems of the national security and its endlessly proliferating hearings are totally barren of scholarly or informed testimony on this subject.

⁵⁸ The friendly witness Cvetic testified before the Committee four times (*Western Pennsylvania* (1950) 1195-1352, 3007, 3029,

meaningful facts that can be isolated in the hearing are buried under a mountain of names."⁹

11. In order to ensure the maximum injury to the witness, the Committee invariably requires him to appear at a public session. The Committee uses the executive session primarily for the purpose of determining how best to in-

3143); John Lautner testified on ten separate occasions between the 84th and 86th Congresses (*Supplement to Cumulative Index to Publications of the Committee on Un-American Activities*, 187; Barbara Hartle was likewise a prolific testifier with four appearances (*op. cit.* p. 141; *Pacific Northwest* (Seattle 1954) 6051-6125; (Portland 1954) 6629-6650) between 1954 and 1960; in four days of testimony, Mrs. Mildred Blauvelt, a "red squad" agent of the New York City Police force supplied the Committee with the names, and in most cases, the addresses of 450 people (*New York City* (1955) 820-989. She gave further testimony along the same lines in the 1955 *Los Angeles* hearings (1526-1537, 1668-1676).

On the duplication of testimony, compare the testimony of Golden (*Greater Pittsburgh Area*, 1959) 320-345, 367-369; Holmes (*Chicago Area*, 1965) 331-383; Berecz (*Buffalo Area*, 1964) 1531-1561; Withrow (*Minneapolis Area*, 1964) 1690-1751; Penha (*New England Area*, 1958) 2090-2933 and Prussion (*Northern California*, 1960) 2031-2065 and compare the documents concerning the Communist Party's 17th National Convention in the Appendix to *Northern California District* (Part 4, 1960) with those contained in *Chicago Area* (Part 2, 1965). This constant rehashing of the same material by the Committee is a travesty of investigative fact-gathering.

⁹ The Committee's obsession with names at the expense of its Congressional responsibility to investigate facts is no more graphically illustrated than in its colossal "Cumulative Index to Publications" which purports to break down into a usable index form the Committee's work from 1938 through 1954. It consists entirely of alphabetical lists of the names of individuals, publications and organizations. The "Supplement to Cumulative Index" (1955-1960) follows the same pattern but adds a subject matter index to a Committee publication on Russian Communism. The hearings are nowhere indexed and it may well be that the Committee has concluded that there is nothing to index. The Committee does not explain how an index of names serves the legislative needs of Congress.

jure the witness. The fact that the witness has already testified *in camera* does not save him from a public appearance. The public session facilitates his exposure as well as the exposure of those whom he is required to name.⁶⁰

12. The public exposure hearing operates through a dual process of public identification of the victim and the stimulation of group and individual economic, social and political sanctions against him so that he will be discharged and permanently blacklisted, his career and reputation destroyed, his social and family relationships ruined and his

⁶⁰ See the *Yellin, Grumman and Silber* cases, *supra*; *Chicago Area* (1965), *passim*. When the Committee obtain names from a friendly witness in executive session, it adduces the names again in public session. For example, *Communications Infiltration* (1957) 1510:

"Mr. Arens: Now during the course of your membership in the Communist Party did you know a number of people as Communists who were engaged in the communications field?

Mrs. Greenberg: I did.

Mr. Arens: Have you conferred with myself and with other members of the staff with reference to the facts as you have known them?

Mrs. Greenberg: Yes, sir.

Mr. Arens: Do you have before you now a list of names of persons that you have given to the staff here, persons known by you to a certainty to have been members of the Communist Party?

Mrs. Greenberg: I have.

Mr. Arens: As to each of these persons, have you served with him or her in a closed Communist Party meeting?

Mrs. Greenberg: I have.

Mr. Arens: Would you kindly tell us the name of each of these persons, and give us just a word of description concerning each one of them."

Newark Area (1958) 2763 :

"My name is Kate Heck, and I live in Newark, N. J. As to my occupation, I am now unemployed as a direct result of this committee. I was called before an executive session. I

children shunned." The Committee seeks to achieve its purposes by attributing to the witness views and affiliations—political, trade union, organizational—which it equates with such fear-engendering crimes as treason, plotting, espionage and sabotage. In order to guarantee results, the Committee collaborates with those in the community who share its views to inspire in the rest of the community sufficient hostility to the victim to do its bidding. An exposed witness suffers an invasion of his constitutional rights; he is also isolated from the moral and ethical protections of his society.

appeared there and I was subpoenaed to an open hearing; and when I so informed my employers, I lost my job."

"R. 143, 150-151, 154, 156, 164, 167-168, 180-181.

The 1951 Annual Report of the Committee states:

"It was the hope of this committee, after having conducted the 1947 hearings, that the motion-picture industry would accept the initiative and take positive and determined steps to check communism within the industry . . . The committee pursued its established policy that whenever it is obvious that a responsible group, whether in industry, labor or independent organization, does not perform its duty in guarding itself against Communist influence, then the committee must expose this defect. So it was with the motion-picture industry . . . If Communism in Hollywood is now mythical, it is only because this committee conducted three investigations to bring it about. The industry itself certainly did not accomplish this." H. Rep. No. 2431, 82nd Cong., 2d Sess., pp. 2, 8.

See also *Los Angeles Professional Groups* (1952), 4116; Barth, *Loyalty of Free Men* (1951) 70-71; *Some Illustrations of the Harms Done to Individuals By the House Un-American Activities Committee*, American Civil Liberties Union, July 28, 1961.

The exposure process also welcomes initiative from private sources:

"The committee has formulated the policy of investigating complaints received from American citizens who have the interest of the United States foremost in their hearts and minds. In

13. In furtherance of the collaboration referred to above the Committee elicits details about the witness' life, residence, occupation and place of work." Congress has no need for these facts, but they help zealots in the community, in Chairman Walter's words, "do the rest." The

each instance the committee has undertaken an investigation only upon complaints by citizens." 79th Cong., 2d Sess., H. Rept. 2233.

When the Committee demanded the radio scripts of selected news commentators, Representative Landis declared:

"As a public agency we are compelled to respect a reasonable request from substantial citizens." 92 C. R. A3149 (1946).

The Committee's request that American institutions of higher learning submit textbook lists was justified on the grounds that the investigation was requested by the National Council of the Sons of the American Revolution. Carr, *House Committee on Un-American Activities* (1952) 283. See also *Dayton Area* (1954) 6802.

"The following exchanges are typical:

"Mr. Moulder: Where is your office located from which you engage in the practice of law?

Mr. Steinmetz: In the city of Los Angeles.

Mr. Moulder: In what building and what office number?

Mr. Steinmetz: Does that have any pertinency? * * *

Mr. Moulder: To properly identify you, as to who you are. We are trying to designate as to just exactly who you are.

Mr. Steinmetz: I believe it is in the telegram as correctly stated there, Mr. Moulder. That is the telegram which I received summoning me to this postponed hearing.

Mr. Moulder: Then do you refuse to answer that question?

Mr. Steinmetz: Well my address, as I say, is correctly stated in the telegram, I believe you have a copy."

(Witness answers question) *Los Angeles Professional Groups* (1952) 3912.

* * *

Mr. Kunzig: What is your address, Professor?

Mr. Glasser: My mailing address, the record may show, is * * *. I am not giving my home address. I think you want identification of a mailing address. * * *

Mr. Kunzig: I would like to ask for your home address, and I hereby ask your home address. * * *

(footnote continued on following page)

need to ensure that the exposure will "take" also explains the Committee's partiality for "on location" hearings. Since 1950, the Committee has held hearings in more than 25 different American cities (and in some of them three or four times). It is this need also that causes the Committee to lean so heavily on the press and the mass media.⁴³

14. The exposure system not only has its "law side" but it also has its "equity side." The Committee uses its power officially to "clear" witnesses who find themselves unemployable because they have previously been exposed. Organizations also are offered similar relief when they become acceptable to the Committee.⁴⁴

Mr. Doyle: Mr. Chairman, this witness is the same as any other American citizen, and we are entitled to have his residence address, and I ask that it be given.

• • •

Mr. Velde: Yes, the Chair decides or feels very definitely there is no reason why you should refuse your home address, and I direct you to answer that question, Professor.

Mr. Glasser: I will answer it, sir. I am going to answer it under protest, my reason being fear of harassment.

Mr. Clardy: Mr. Chairman, may I ask that he be instructed to proceed with the answering and stop making speeches."

Infiltration—Education (1953) 181-182

See also 2 *New York City Area* (1953) 1245, witness refuses address because on a previous occasion "we had many anti-Semitic letters;" *New York City Area* (1953) 2005, witness required to give address publicly after requesting that it be taken in executive session, witness explaining, "We have been molested every time there was such a hearing;" • • • "I have small children and we have been molested by some hoodlums," *ibid.*; *Infiltration-Government* (1952) 3346, 3352; *Detroit Area* (1952) 2805-2806; *Buffalo Area* (1964) 1569.

⁴³ *Supra*, pp. 7-10; Carr, *The House Committee on Un-American Activities* (1952) 139, 174, 391-392; *Washington Post*, April 5, 1953, "A Velde 'File' Dissected" and *New York Times*, July 20, 1953, "Sherrill Protests Inquiry Procedure."

⁴⁴ R. 145, 146, 162-163 and James H. Robinson (1964).

15. In order to make effective its exposure activities, the Committee engages in a variety of related, non-legislative operations:

(a) The Committee condemns organizations as subversive without hearings in order to discredit their activities and to supply its collaborators with the raw materials for judging, injuring and blacklisting Americans because of their membership in these organizations. See *infra*, pp. 115-118.

(b) The Committee publishes an ever-increasing stream of propaganda which has no relationship to the legislative process but which promotes fear and hate, so essential to the operation of the exposure system.*

(c) The Committee maintains an elaborate system of dossiers. These dossiers are made available to the

* An examination of the Committee's Annual Reports reveals the fact that the Committee is the sponsor or publisher of an ever-growing stream of reports, documents, surveys, "consultations" which are not based on the hearings, are not House reports and indeed are not legislative at all, but are the Committee's own propaganda in support of its political views. The following are a few titles as set forth in the Committee's Annual Reports for 1956, p. 65 ("The Great Pretense", "The Communist Conspiracy, Part I", "Soviet Total War"); 1957, p. 7 ("International Communism", "Ideological Fallacies of Communism"); 1958, p. 81 ("Communist Program for World Conquest", "The Irrationality of Communism"); 1959, pp. 117-118 ("Language As A Communist Weapon", "The Crimes of Khrushchev, Part I-IV", "Who Are They?—Karl Marx"); 1960, pp. 113-114 ("Lest We Forget", "Communist Economic Warfare"); 1961, p. 184 ("Manipulation of Public Opinion"); 1962, p. 87 ("Communist Party's Cold War Against Congressional Investigation of Subversion"); 1963, p. 118 ("World Communist Movement: Selective Chronology", Vol. II); 1964, p. 65 ("World Communist Movement: Selective Chronology", Vol. III).

This non-legislative output, together with the name-indexed hearings, House reports and indices, is circulated in enormous quantities:

(footnote continued on following page)

Committee's supporters, either directly or through their Congressmen, for the purpose of enabling the Committee's supporters or collaborators to maintain surveillance over political suspects and to do them injury with officially sanctioned weapons.⁶⁶ The dossiers are supplemented by huge published indices of names.

Year	Copies Circulated
1957 (Annual Report, 6)	501,000
1958 (80)	524,000
1959 (117)	650,000
1960 (113)	332,000 (plus "thousands of other documents")
1961 (183)	508,000
1962 (87)	541,250
1963 (118)	252,465
1964 (65)	206,480

The Committee has secured authorizations, among others, for the printing of 1,500,000 (H. Con. Res. 52, 81st Cong., 1st Sess.), 540,000 (H. Con. Res. 98, 99, 82nd Cong., 1st Sess.) and 84,500 copies (H. Res'ns 168, 169, 170, 187, 228, 258, 86th Cong., 1st Sess.) of its publications.

These publications are used to validate extremist politics (e.g. Stormer, *None Dare Call It Treason* (1964)) or to handicap the achievement of important national goals. See Cook, *The Segregationists* (1962) *passim*.

The hearings themselves are widely circulated in order to implement the Committee's exposure aims. See, for example, the following statement of Chairman Velde in *Chicago Area* (1954) 4255:

"Of course, we have had a great many hearings all throughout the country dealing with the subject of communism and the labor union movement. We have had a lot of our hearings printed, pamphlets, so that members in the Communist-dominated unions should know that we have the information and should be willing to read the information that is furnished free of charge in most instances by the Federal Government."

See also Comment, *Legislative Inquiry into Political Activity*, 65 Yale L. J. 1159, 1161; Cushman, *Civil Liberties in the United States* (1956) 195-196.

⁶⁶ R. 136-141, 142, 176, 146-149, 158, 167. As early as 1952, it was estimated that the Committee had accumulated about one million political dossiers. Carr, *op. cit.* 254. The file service is intensively used to discredit individuals and organizations, to

The Committee, it must be emphasized, has not temporarily lapsed into an invalid application of its charter in this case. The Committee has erected upon its mandate a unique governmental power system, not only in conflict with the legislative role which alone can justify its existence but fundamentally irreconcilable with the principle of separation of powers upon which our Government rests.

Nor does asserted House approval redeem Rule XI or justify the new kind of governmental power which the Committee has developed through it. In *Barenblatt, supra*, at 117-121, the Court rejected a contention that Rule XI was too vague and general to justify the investigation there in issue. The Court acknowledged the vagueness of the Rule, but found that historically the Rule had been interpreted by the Committee to apply to Communism and the activities of the Communist Party, that Congress had acquiesced in and ratified this construction of the Rule and that as construed in this limited way the Rule adequately supported the use of compulsory process in a probe of "Communist activities" in education. But, as we have shown, the Committee characteristically investigates "Communist activities" through exposure, not fact-gathering; that is, by taking from the witness what the Committee has no right to

legitimize private sanctions and as a supplement to investigative exposure. See for example Cook's *The Ugly Truth About the NAACP* (n.d.; based on Congressional disclosures of the Committee dossiers of NAACP leaders) and Lowman (Circuit Riders), "The Public Records of 2109 Methodist Ministers" (1960); Lowman (Circuit Riders), "The Public Records of 658 Clergymen and Laymen Connected With the National Council of Churches" (1962). And from the same source: "6000 Educators" (1959), "660 Baptist Clergymen", "30 of 95 Men Who Gave Us the Revised Standard Version of the Bible."

claim—his privacy, personal freedom, livelihood and good name—and denying to Congress what it needs—facts to aid in the legislative process. Thus, what the Court in *Barenblatt* thought was a cure—specificity—for the conceded vagueness of the Rule is as constitutionally objectionable as the disease itself. The narrowed construction of the Rule is simply a license by the House to the Committee to expose Communists, ex-Communists and suspected Communists “wherever they may be found.”⁴¹

⁴¹ The Court’s limiting gloss in *Barenblatt* and its conclusion with respect to the ratification by the House of the gloss involves the very abstraction against which the Court in that case cautioned. Thus, it cannot fairly be said that the House, either through appropriations approval or contempt citations (see Beck, *op. cit.*, pp. 56, 84, 114, 138-140, 142, 151-152, 185) is adequately apprised of what the Committee does. To be sure, the House bestows a wholesale approval on the Committee’s pervasive activities as a result of annual appropriation grants but particular investigations are not supervised and controlled with the same care and intensity as investigations with subpoena power in other areas (see *supra*, note 11). *There is no other standing committee which is at once so profligate in its use of the subpoena power and so free of either preliminary or final control by the parent branch of Congress.*

Moreover, as we point out below, the Court in *Barenblatt* was considering only the contention that the Rule is too general to justify the inquiry involved there, not “First Amendment vagueness,” the restraint on free speech and self-censorship resulting from the vagueness of the Rule. In addition, the Court did not find it necessary to deal with the extremely loose way in which the Committee has always defined Communism and Communist activities (see *infra*, pp. 110-114). Nor did the Court take into account the way in which the Committee’s application of the Rule invades the freedoms of a wide variety of organizations and publications on the ground that they do not bar Communists from membership, share some Communist objective or demonstrate in their activities some proscribed degree of consanguinity to the Communist parent stock. (See *infra*, pp. 115-118.) Finally, it seems to us, that the Court’s “Communism” resolution of the Rule’s ambiguity cannot be squared with the Committee’s investigation of the Ku Klux Klan. See *infra*, p. 114.

If a statute were enacted merely requiring the registration of the class around which, according to *Barenblatt*, the Rule as construed draws a circle and subjects to compulsory process, it would be unconstitutional. And here is no mere registration, but a highly punitive form of compulsory identification. Cf. *United States v. Brown*, *supra*.

The Court, it seems to us, cannot salvage the Rule. It cannot be enforced as written through compulsory process for reasons made clear in *Watkins*, *supra*. Neither can it be enforced within the rewritten limits and narrow compass of the *Barenblatt* "Communism" gloss. We are dealing with a direction by Congress to one of its committees, an area which, as the Court noted in *Watkins*, *supra*, at 205, is "peculiarly within the realm of the legislature." It would therefore seem inappropriate for the Court now to provide another limiting construction.

And even if Rule XI could be further patched so as to repair its facial evils of vagueness and overbreadth on the one hand and the evils, in application, of specification and identification on the other, a threat to the protected freedoms would remain, for the Rule makes communication its target. If the Congress needs to be informed in this area, it "is free to determine the kinds of data that should be collected." If compulsory process is thought to be necessary, "a measure of added care" by the House is required in drafting a new authorization. *Watkins*, *supra*, at 215. But constitutional life can no longer be breathed into Rule XI.

VI.

The conviction rests upon an attainder proceeding prohibited by Article I, Section 9, Clause 3 of the Constitution.

A bill of attainder is a legislative judgment without trial. See *United States v. Lovett*, 328 U. S. 303; *Ex parte Garland*, 4 Wall. 333; *Cummings v. Missouri*, 4 Wall. 277; *United States v. Brown*, *supra*.

Exposure is a form of attainder in which a judgment of subversion is handed down by the Committee against an individual witness without trial. The present case is an unusually compelling example of attainder because not only was the effect of the proceeding to impose a punishment upon petitioner, but that was its clearly-expressed purpose. The Chairman of the Committee stated that the purpose of committee's power was to expose him and to break the Union (*supra*, pp. 7-10). The subcommittee avowedly used the hearing to reinforce this objective. More particularly, the purpose and the effect of the hearing was (a) to punish; (b) without trial; (c) an identified individual; (d) for political acts; (e) committed in the past. This form of action by a legislature is unmistakably an attainder under Article I, Section 9, Clause 3 of the Constitution. It matters not at all that the action complained of here was that of an agent of Congress rather than that of the Congress as a whole, as in the *Lovett* case, *supra*.⁴⁸ In *Cummings v.*

⁴⁸ It is significant that the *Lovett* attainder arose from charges of subversion against Lovett and his colleagues by the Special Committee on Un-American Activities and its Chairman. See *Barenblatt, supra*, at 155 (dissenting opinion); 89 Cong. Rec. 479-486.

Missouri, supra, at 325, the Court used language which is directly applicable here:

"The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

Confronted with Communist disclaimer affidavits which had not been challenged and impatient with the workings of the statute which had been passed to deal with its claimed concern, the Committee acted because it feared that if it did not punish petitioner he might escape all punishment. This need to improvise a punishment against politically unpopular individuals where no legitimate punishment is available explains the *Test Oath* attainders as well as the *Lovett* attainer. The Committee resolved its dilemma by creating an offense, putting petitioner on trial, determining his guilt, and inflicting a punishment which it deemed commensurate with its gravity. In the language of the *Cummings* case (4 Wall., at 320) the use of the Committee's power "was required to reach the person, not the calling."

There can be no question that the intended sanctions of exposure and disqualification for union office each separately constitutes a punishment in the attainer sense.

Involved here is no mere neutral disclosure of petitioner's politics (see our discussion of the invasion of petitioner's First Amendment rights below), but rather a judgment that

the petitioner was guilty of "subversion." And beyond this the attachment to petitioner of a visible badge of infamy which could be used to legitimize private sanctions against petitioner and the deprivation of his "rights, civil or political, previously enjoyed . . ." (4 Wall., at 320-321).

As Irving Brant has written of legislative exposure:"

" . . . By smiting a man day after day with slanderous words, by taking away his opportunity to earn⁶⁶ a living, you can drain the blood from his veins without even scratching his skin.

"Today's bill of attainder is broader than the classic form, and not so tall and sharp. There is mental in place of physical torture, and confiscation of tomorrow's bread and butter instead of yesterday's land and gold."

And, of course, occupational disqualification of the politically unpopular⁷⁰ is the classic form of punishment by at-

⁶⁶ Quoted in Mr. Justice Douglas' dissent in *Flemming v. Nestor*, 363 U. S. 603, 629. See also Brant, *Bill of Rights* (1965) Chapter 37, "Attainder by Congressional Committees," pp. 459-479; see also Note, *Punishment: Its Meaning in relation to Separation of Powers and Substantive Constitutional Restrictions And Its Use In the Lovett, Trop, Perez and Speiser Cases*, 34 Indiana Law J. 231, 234-249.

⁷⁰ All authorities agree that bills of attainder, from the earliest recorded instances of their use in England late in the 13th Century onward to their last brief but drastic phase during and at the close of the long quarrel between the Commons and the Stuarts, were a means of punishment of "political" offenders—usually persons of position and influence whose political views were obnoxious to the dominant party. See Creasy, E. S., *Rise and Progress of the English Constitution* (3d ed. 1856) p. 252; Adams, Geo. B., *Constitutional History of England* (Schuyler rev. 1934) pp. 228-229, 280; Naismith, *English Public Law* (1873) p. 153; Stephens, *History of Criminal Law of England* (1883) Vol. I, pp. 160-161; Anson, *Law and Customs of the Constitution* (5th ed. 1922) Vol. I, p. 362; Story, *Commentaries on the Constitution* (5th ed. 1891)

tainder. See the *Test Oath* cases, *Lovett's case*, *supra*, and *United States v. Brown*, *supra*.

The Court recently struck down an attainder against a union official. *United States v. Brown*, *supra*. The Court ruled (at 461) that Congress cannot "weed dangerous persons out of the labor movement" by "specify[ing] the people upon whom the sanction it prescribes is to be levied." It could only "accomplish such results by rules of general applicability." Thus the very objective which the Court held is forbidden to the Congress shaped the Committee's proceeding in this case.

It is only necessary to add that the attainder evil arises when passion and fear create pressures to punish unpopular minorities without resort to the established forms of law.⁷¹ Attainder was used historically to strike at its vic-

Sec. 1344; Medley, *English Constitutional History* (6th ed. rev. 1925) p. 167.

"Subverting the government" was a common charge in the late modern period. Notorious among the English attainders by Act of Parliament was that of Thomas Wentworth, Earl of Strafford, most faithful counsellor of Charles I, in 1641 (see note 72 *infra*) on the ground that he had endeavored "to subvert the ancient fundamental Laws and Government." 17 Car. I. *DeLolme on the Constitution* (1838 ed.) Vol. I, p. 400; Hume, *History of England* (Brewer ed. 1880) pp. 183 *et seq.*; Medley, *supra*, p. 167; Feilden, Henry, *Constitutional History of England* (4th ed. rev. 1911) p. 153. Similarly in 1645 a preliminary impeachment against Archbishop Laud was converted into an attainder for attempting to alter the religion and fundamental laws of the realm. Howell, *State Trials*, Vol. IV, 598, 599. In 1715, the "Jacobite" Lords Bolingbroke and Ormond were impeached for acts prejudicial to the national welfare, i.e., their share in the peace of Utrecht, and later attainted on failing to surrender. 1 Geo. I. cc. 16, 17. Howell, *State Trials*, Vol. XV, 1002, 1012.

⁷¹ The Court has traced the history of attainders in *United States v. Brown*, *supra*, and in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 142.

times because no other legal way could be found to do so."¹² But the attainder evil cannot be viewed as confined to an unhappy far-off time. As Mr. Brant has written (op. cit. *supra*):

"What is perfectly clear is that hate, fear and prejudice play the same role today, in the destruction of human rights in America that they did in England when a frenzied mob of lords, judges, bishops and shoemakers turned the Titus Oakes blacklist into a hangman's record. Hate, jealousy and spite continue to fill the legislative attainder lists just as they did in the Irish Parliament of ex-King James."

The present is history and exposure is the attainder of our time—the grave and frightening reflection of the breakdown in our legal protections which has resulted from the red hunts which have engulfed us.¹³

¹² The Earl of Strafford was attainted of high treason "to Husband time" and to "obviate those Scruples and Delays, which through disuse of proceedings of this nature, might have risen in the manner and way of proceedings." Rushworth, *Strafford's Trial*, pp. 676-677.

¹³ Before exposure became institutionalized as the modern form of attainder, the Congress experimented with variants of attainder imposed through its control over appropriations. See the 1924 War Department Appropriation Bill (H. R. 7877; 65 Cong. Rec. 5031-5032); Interior Department Appropriation Bill, 1930 (H. R. 4852), 84 Cong. Rec. 4308-4346; Emergency Relief Appropriation Bill, 1942, 87 Cong. Rec. 5110; Interior Department Appropriation Bill, 1941, 87 Cong. Rec. 4072; and see Lovett, *supra*. Another form of attainder was the attempt made in the House directly to deport Harry Bridges in June, 1940, H. R. 9766, 76th Cong. Sess. The bill passed the House, was reported to the Senate (S. Rep. No. 2031) but was not passed. A similar bill was introduced into the 77th Congress (H. R. 1644) and again passed the House, 87 Cong. Rec. 7675. All of the attainder attempts failed except that of Lovett, Watson and Dodd and David Lasser, 87 Cong. Rec. 5113.

VII.

The compelled disclosures in issue here invade rights protected by the First Amendment.

Even if the Committee had a valid legislative purpose (and the other contentions we have raised were without merit), the conviction could not stand.

It is no longer open to question that the compulsory disclosure of political affiliation and group association, of the kind involved here, constitutes an invasion of the First Amendment.¹⁴ However, under the *Barenblatt* case, the

¹⁴ The enforced disclosure of affiliation and opinion is no insignificant or minor rupture in the fabric of our freedoms. The matrix of our entire system for protecting dissent is embedded in the anonymity which an impersonal urbanized culture has made possible. The individual's right to dissent was but an abstraction in a pre-industrialized culture when each man was at the mercy of his neighbor's prejudices. As John P. Roche put it in "American Liberty: An Examination of the 'Tradition of Freedom,'" *Aspects of Liberty*, Konvitz and Rossiter (eds.) (Cornell University Press, 1958), "In a very real sense the very impersonalization of urban life is a condition of freedom; it is quite possible to live differently and believe differently from one's neighbors without their knowing, much less caring, about the deviation." See Nye, *Fettered Freedom* (Michigan State College Press (1959)) for an account of liberty in America in the pre-industrial era.

The goal of the Committee's exposure system is nothing less than the restoration of the social and economic controls which gave dissent no quarter. And it is not the compulsion to answer which alone condemns interrogation in the area of political expression. The mere fact that the witness must make a public choice between answering the question and declining to answer it, improperly burdens the exercise of the right of political expression (cf. *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203). The very inquiry whether a witness is a member of an organization officially branded as subversive exerts as discouraging an effect upon his freedom of choice and the freedom of others as, for example, the interrogation by an employer concerning the union affiliation of his employee. *International Assn. of Machinists v. N. L. R. B.*, 311 U. S. 72, 78, 80. And the refusal to answer would establish the witness' "non-cooperation with a congressional committee," in itself, whatever its motivation, a potent basis for community con-

vindication of those rights depends upon a balancing of "the competing private and public interests at stake in the particular circumstances shown." 363 U. S. at 126. In this case, as in *N. A. A. C. P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516, and *Gibson v. Florida*, 372 U. S. 539, the "circumstances shown" do not warrant a sacrifice of petitioner's First Amendment freedoms.

There was no overriding legislative purpose for the hearing, no legitimate reason for calling petitioner and no need for his testimony in that:

1. Even if the purpose of the hearing were technically legislative, it was not strong enough to override petitioner's First Amendment rights;
2. The Committee already had detailed information in its files about petitioner (*supra*, pp. 16-17);
3. For the five years prior to the date of his appearance petitioner had filed non-Communist affidavits pursuant to the Taft-Hartley Act (*supra*, p. 16) (*American Communications Assn. v. Douds*, 339 U. S. 382);
4. The proceeding was not based on "probable cause for belief that" petitioner "possessed information that might be helpful" to the Committee (*Barenblatt, supra*, 134) and no such cause was demonstrated either at the hearing or the trial;
5. The hearing resulted from "indiscriminate dragnet procedures" (*ibid.*) through which the entire leadership of the Union was being systematically subpoenaed.

demnation. Such "non-cooperation" was, for a long time, a ground for discharge of professors enjoying tenure from most American universities and of employees from private employment. *New York Times*, December 10, 1953.

Moreover, quite apart from the above considerations which decisively subordinate the Committee's immediate concerns to petitioner's constitutionally-protected rights, a detailed analysis in a larger focus of the competing interests involved brought an expert, Professor Thomas I. Emerson of the Yale Law School, to the conclusion, under circumstances comparable to those present here (*supra*, p. 15):

"that the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interests of the individual in freedom of speech or silence, as he may prefer, and by the interests of the community in maintaining freedom of political expression and other conditions essential to maintaining an open society."

Invasion of the First Amendment rights of Committee witnesses has come to be mechanically justified on the grounds of national security in every investigation involving Communism. But the facts upon which such justifications are based are stale and require authoritative reevaluation. It is simply a myth that our security is under a threat of internal subversion of such menacing proportions as to require the continuing curtailment of our freedoms for the indefinite future. The fact is that the power of Communism in the United States is now and has for some time been at an extremely low ebb. See Emerson testimony, *supra*. Nor can it be convincingly argued that there is a foreign threat which justifies curtailment of domestic freedoms. The collapse of the myth of a monolithic Communist world, the emergence of polycentrism, the rivalry of the Soviet and Chinese systems and the development of mutually shared goals of co-existence between the United States

and the Soviet Union—all of these circumstances condemn as unreal the justifications for restraints on our basic freedoms which have hitherto been advanced.”

The reasons which, in *Barenblatt*, were brought to the support of the constitutionality of compulsory disclosures in this area are anachronistic.” It is true that for the Committee the more things change politically, the more they remain the same investigatively. But the Committee’s ritualistic anti-Communism is of no help here. Even in the case of commercial regulations the Court evaluates the reasonableness of a restraint in the light of changed circumstances.” The Court is the steward of our freedoms and has long recognized that what might have been a constitutionally permissible restraint in a time of political tension, may not, in a calmer time, meet the strict requirements of the First Amendment. Compare *Ex parte Endo*, 323 U. S. 283 with *Hirabayashi v. United States*, 320 U. S. 81.

” See Kennan, *Polycentrism and Western Policy*, Foreign Affairs, Jan. 1964; Senator Fulbright’s speech “Foreign Policy—Old Myths and New Realities,” 110 Cong. Rec. 6227; Secretary of State Rusk’s speech reported in Congressional Quarterly, March 6, 1964; *East-West Trade, A Compilation of Views of Businessmen, Bankers, and Academic Experts*, Senate Committee on Foreign Relations, 1964, pp. 220, 245, 273, 278, 284; *East-West Trade*, Hearings before the Senate Committee on Foreign Relations, 89th Cong., 1st Sess., Part II, Feb. 24, 25 and 26, 1965, pp. 26-31, 60-62, 116-69, 243-44, 248-50; *Report to the President of the Special Committee on U. S. Trade Relations with Eastern European Countries and the Soviet Union*, U. S. Govt. Printing Office, 1965, pp. 1-2.

” “It has become evident to most of us”, an expert has recently written, “that the language and ideas of the cold war are no longer adequate as a guide to internal politics today.” Shulman, *Beyond the Cold War* (New Haven 1965).

” Compare *Block v. Hirsh*, 256 U. S. 135 with *Chastleton v. Sinclair*, 264 U. S. 543, 547-8 and *Noble State Bank v. Haskell*, 219 U. S. 104 with *Abie State Bank v. Weaver*, 282 U. S. 765, 772; see also *Baker v. Carr*, 369 U. S. 186, 214.

It would be ironic indeed if conflict with Soviet Communism should serve as a reason for the dimming of democratic freedoms. For, whatever form that conflict may have assumed in the past, whatever threat it may have posed to our security as a Nation, the fact is that its terms have drastically changed. Today our most important weapon in this conflict is freedom, not repression.

VIII.

Rule XI is unconstitutional on its face by reason of its vagueness, generality and breadth.

Even if the interrogation of petitioner were constitutionally permissible under a narrowly drawn enactment, the conviction cannot stand because Rule XI is, on its face, an unconstitutional invasion of the First Amendment. And the change in circumstance which requires the Court to turn away from the constraints of the past which have justified impairment of political expression must receive full play in its scrutiny of the Rule for it clearly invades the protected freedoms.

The key jurisdictional term in the Rule is "propaganda." The Rule does not, either disjunctively or conjunctively, link propaganda with some other form of activity. If the subject matter of propaganda were subtracted from it, there would be nothing left. The only "remedial legislation" which the Committee is authorized to recommend is legislation relating to propaganda. The substantive evil is the content of printed matter, utterances and idea.¹³ And,

¹³ The Rule's concern with propaganda which seems so archaic today is the product of the First World War when this newly developed technique of influencing human actions was vigorously employed by the combatants to gain American support. It was feared as a sinister and coercive tool for transmitting pressure

no gloss, however ingenious, can convert the Rule into one dealing with conduct rather than speech, for to do so would be to attribute to Congress a disregard or ignorance of one of the most meaningful distinctions which our public law has produced. In order to exercise jurisdiction the Committee must inevitably label and classify those ideas which are "unAmerican," "subversive" or "attack the principle of the form of government as guaranteed by our Constitution."

The Rule thus authorizes the Committee officially to brand certain classes or forms of ideas and expressions. Such activity by the legislative branch of the government can only serve to censor free speech and political expression, for people are unwilling or afraid to advocate or even to listen to ideas which have been branded as disloyal by the government.

It is apparent that such an extraordinary departure from representative government as we have known it would have to be justified—if it could be justified at all—by the most meticulously defined limitations. Instead we find that the scope of this censorship system is vague and boundless.

on behalf of unseen principals and endowed with an almost supernatural power. It was associated with foreign plots to undermine in illegitimate ways the democratically determined national interest. See Lasswell, *Propaganda*, XII Encyclopedia of the Social Sciences, 521-527.

The source of the Rule is Senate Resolution 439 which in 1919 extended the authority of the Overman Committee, then investigating German propaganda, to investigate:

"... any efforts being made to propagate in this country the principles of any party exercising or claiming to exercise authority in Russia, whether such efforts originate in this country or are incited or financed from abroad, and, further, to inquire into any effort to incite the overthrow of the Government of this country, or all efforts, by force or by the

A. The Applicable Standards.

Section 192, under which petitioner was indicted and convicted, punishes refusals to answer questions "pertinent to the question under inquiry" by a Committee of either House of Congress where the question under inquiry is within the power of the Committee to investigate. The witness must resolve for himself whether a question by the Committee is authorized and this he can only do by reference to the statute or resolution purporting to authorize the investigation. Therefore, the contempt statute must be read together with the authorization of the Committee, in order to decide whether the witness was able to make the determination that the inquiry was authorized with the accuracy required by the due process clause.

This composite statute provides no reasonably ascertainable standard of guilt and is too vague and indefinite to meet the standards of due process under the Fifth Amendment. As the Court has held,

"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U. S. 451, 453. "Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula." *United States v. Cardiff*, 344 U. S. 174, 176. "In the light of our decisions, it

destruction of life or property, or the general cessation of industry."

The Fish Committee, created by House Resolution 220 in 1930, was charged with investigating not only "communist propaganda" but a wide range of conduct as well. The McCormack-Dickstein Committee was charged in 1934 (H. Res. 184) with investigating Nazi propaganda in a resolution which foreshadows the language of House Resolution 282 in 1938 and of Rule XI. The term "Un-American" was first introduced in the 1938 resolution.

appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." *Champlin Refining Co. v. Corporation Commission of Oklahoma*, 286 U. S. 210, 243.

The sanction of the Rule is not merely the ultimate one of contempt. The vagueness of the Rule must be also assessed in terms of the "chilling effect" of its censorship-exposure sanctions. Compare *Dombrowski v. Pfister*, 380 U. S. 479, 492-494.¹⁹

As the Court has frequently held, the First Amendment makes heavy demands for precision on statutes which impose restraints on speech, press and assembly. See *Baggett v. Bullitt*, 370 U. S. 360; *NAACP v. Button*, 371 U. S. 415; *Cramp v. Board of Public Instruction*, 368 U. S. 278;

¹⁹ The vagueness issue raised here is quite different from that adjudicated in *Barenblatt*. The petitioner in that case presented in this area only the question (Brief p. 4), "Whether Congress has authorized the House Committee on Un-American Activities to conduct by compulsory process as investigation in the field of education." On the basis of implicit House ratification of the Committee's past investigation of "Communist activities," the Court gave an affirmative answer to the question presented. It further found that "Communist activities" were a touchstone which validated as legislative the Committee's interrogation. *Barenblatt, supra*, at 123. But the intimidating effect of the Rule cannot be measured by the House's implicit approval of a narrowed scope for its application. It can only be measured by the impact of the language of the Rule and of what the Committee has done with the Rule on the exercise of the protected freedoms. In addition, it would appear that the view that the "Committee is allowed, in essence, to define its own authority, to choose the direction and focus of its activities" (*Watkins, supra*, at 205) has received renewed validation from the Ku Klux Klan investigation. (See *infra* p. 114).

Winters v. New York, 333 U. S. 507, 509-510, 517-518; *Herndon v. Lowry*, 301 U. S. 242; *Stromberg v. California*, 283 U. S. 359; cf. *Sweezy v. New Hampshire*, 354 U. S. 234, 259.

In the *Cramp* case, *supra*, the Court said (at 287):

"The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedom affirmatively protected by the Constitution. As we said in *Smith v. California*, ' * * * stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.' 361 U. S. 147, at 151. . . ."

In *NAACP v. Button*, *supra*, the Court stated (at 432-433):

"(I)n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. *Thornhill v. Alabama*, 310 U. S. 88, 97-98; *Winters v. New York*, (333 U. S. 507), 518-520. Cf. *Staub v. City of Baxley*, 355 U. S. 313 The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. Cf. *Marcus v. Search Warrant*, 367 U. S. 717, 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter

their exercise almost as potently as the actual application of sanctions.

Cases such as *Dombrowski*, *Baggett* and *Sweezy* condemned the term "subversive" as excessively vague in statutes imposing restraints on the protected freedoms. And in *Dombrowski* and *Cramp* the Court dealt with the intimidating vagueness of statutory formulas such as a "Communist front organization" (*Dombrowski*, *supra* at 492-494) and giving "aid, advice, support or influence to the Communist Party" (*Cramp*, *supra* at 285) which are no different from the formulas used by the Committee to condemn individuals and organizations.

Moreover the Rule must be tested by the Court's requirement that restraints in the area of the First Amendment must be narrowly drawn. A statute may not in the pursuit of legitimate ends unnecessarily sacrifice the protected freedoms. *Aptheker v. Secretary of State*, 378 U. S. 500; *NAACP v. Button*, *supra*; *Louisiana ex rel. Gremillion v. NAACP*, 366 U. S. 293; *Talley v. California*, 362 U. S. 60; *Schware v. Board of Examiners*, 353 U. S. 232; *Martin v. City of Struthers*, 319 U. S. 141; *Cantwell v. Connecticut*, 310 U. S. 296; *Schneider v. State*, 308 U. S. 147.

The Rule is far too vague, and broad and general to satisfy the requirements of the First Amendment.

B. The Terms of the Resolution Are Inherently Vague.

In *Watkins*, *supra*, the Court said of the Rule (at 202):

"It would be difficult to imagine a less explicit authorizing resolution which can define the meaning of 'un-American'. What is that single solitary 'principle of the form of government as guaranteed by our Constitution?'"

The key terms of the resolution are neither terms of art nor have they acquired a specialized or technical meaning or a meaning "by general acceptance." *Schechter Poultry Corporation v. United States*, 295 U. S. 495, 552. They are merely forms of political polemic, epithets of opprobrium used to attack the ideas or advocacy which are objectionable to the person who employs them.

The President's Advisory Committee on Universal Training responded to the contention that universal military training is "un-American:"

"An epithet is not an argument. 'Un-American' means simply that it has not been done before in America. If Americans want it, it becomes American."⁸⁰

In *Feinglass v. Reinecke*, 48 F. Supp. 438, 441 (D. C. Ill.), the court pointed out:

"Any political idea that happens to conflict with the economic or political notions of an individual is apt by him to be deemed un-American."

The designation "un-American" implies that there are certain ideas and concepts that are "American." Whatever usefulness such a distinction may have as an appeal to patriotism, it is meaningless as a tool for classifying speech and ideas.⁸¹

⁸⁰ *A Program for National Security*, Report of the President's Advisory Committee on Universal Training (1947), 39.

⁸¹ In an editorial in the *New York Times* on January 5, 1945, the basic ambiguity of this term was thus commented on:

"The Special Committee to Investigate Un-American Activities suffered from ambiguity at its birth. Just what is an un-American activity? The law defines crimes against the state,

Perhaps the most telling commentary on the difficulty of this term is its use by minority members of the committee to condemn the majority's interpretation of the resolution. Thus in the Committee's 1942 report, Congressman Voorhis complained:

"Once . . . the committee undertakes to accuse people of un-American activities because they criticize certain features of our economy or say unkind things about finance capitalism or because they come out for a greater degree of cooperation in our economic life, it is in danger of becoming an agency which arrogates to itself the right to censor people's ideas. That in itself is un-American."²²

Like the term "un-American", the term "subversive" is not a term of art, nor does it have an accepted common meaning, but is rather the language of political abuse or opprobrium. This term, which the Court used in quotation marks in *United States v. Lovett*, 328 U. S. 303, 308, is probably one of the most question-begging words yet devised. Nowhere in the resolution is the question answered, subversive of what?²³

and persons committing such crimes are admittedly un-American. But is it un-American to hold an unpopular opinion . . . or take an attitude that is also held or taken by the Communists? . . . Had he [Dies] pushed his opinion to its logical end more than half the population of the United States might have been denounced . . . he used methods that old-fashioned persons regard as un-American—indictment by innuendo, refusal of defense testimony, prosecution and sometimes persecution in place of impartial investigation."

²² 77th Cong., 2d Sess., H. Rept. 2277, Part 2, 4.

²³ The Committee on Appropriations whose report was considered by the Court in *United States v. Lovett*, *supra*, sought to formulate

It has been well said that this term is a term of abuse customarily applied to activities "helpful or benevolent to wage earners, persons on relief, or those who are disadvantaged in the struggle for existence."*

Since the words "subversive" and "un-American" have no meaning beyond the prejudices of the speaker, we are left only with propaganda which "attacks the principle of the form of government as guaranteed by our Constitution." But this phrase suffers from comparable ambiguity. In *Schneiderman v. United States*, 320 U. S. 118, this Court was unable to identify the "principles of the Constitution" and refused to hold that "petitioner is not attached to the Constitution by reason of his possible belief in the creation of some form of world union of Soviet republics" (at 145). The Court suggested that if there is any indispensable principle of the Constitution, it is the guaranty of freedom of thought (at 138, 144), and stated (at 137, 138) that the Constitution itself refutes "the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution."

its own definition of "subversive activity" after conceding that the term had not theretofore been defined by Congress or by the courts. This definition states that, "Subversive activity in this country derives from conduct intentionally destructive of or inimical to the Government of the United States—that which seeks to undermine its institutions, or to distort its functions, or to impede its projects, or to lessen its efforts, the ultimate end being to overturn it all. Such activity may be open and direct as by effort to overthrow, or subtle and indirect as by sabotage." 78th Cong., 1st Sess., H. Rept. 448 (1943) 5.

* Emerson and Helfeld, *Loyalty among Government Employees*, 58 Yale L. J. 1, 40 (quoting Attorney General Jackson).

The Court of Appeals in *Barsky v. United States*, 167 F. 2d 241, 245, 246 (C. A. D. C.) cert. denied 334 U. S. 843, thus sought to give precision to this phrase: "The basic concept of the American system, both historically and philosophically, is that government is an instrumentality created by the people, who alone are the original possessors of rights and who alone have the power to create government. * * * The prime function of government, in the American concept, is to preserve and protect the rights of the people." Cf. *Schneiderman v. United States*, *supra*, at 181 (Chief Justice Stone's dissenting opinion). But this definition is so broad as to be meaningless.

As Judge Clark pointed out in his dissent in *United States v. Josephson*, 165 F. 2d 82, 96 (C. A. 2), cert. denied 333 U. S. 838:

"And the clause as to attacking the principle of our form of government, as guaranteed by our Constitution, cannot be given any specific content. The freedom of amendment permitted by our Constitution makes possible advocacy of the most extensive changes in our governmental form. It cannot be that the advocacy of amendments urging change in the relation, for example, of the Executive and Congress, the subject recently of several popular books, is subversive."

The basic obscurity of the resolution is compounded by the assumption that there is some one principle of the Constitution. See *Watkins*, *supra*, at 202. Judge Edgerton, dissenting in the *Barsky* case, *supra*, at 262, commented on the difficulty of the expression:

"Does 'the principle of the form of government' here mean the republican or democratic principle only, or

does it include e.g. the constitutional duty of courts not to enforce unconstitutional legislation? This court puts a plural where Congress put a singular, and says 'the principles * * * are obvious.' To me it is not obvious how much Congress meant by 'the principle,' or how much the court means by 'the principles,' or that the two meanings are identical. Both because 'the principle' is vague and because 'attacks' is vague, I do not know whether propaganda 'attacks the principle' if, e.g., it advocates a constitutional amendment replacing the American principle of judicial review by the British principle of legislative supremacy."

The clearest "principle of the form of government as guaranteed by our Constitution" is freedom of thought and of political affiliation and expression; "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate," *United States v. Schwimmer*, 279 U. S. 644, 654, 655. As one of our most eminent historians has written:"

"True loyalty may require, in fact, what appears to the naive to be disloyalty. It may require hostility to certain provisions of the Constitution itself, and historians have not concluded that those who subscribed to the 'Higher Law' were lacking in patriotism. We should not forget that our tradition is one of protest and revolt, and it is stultifying to celebrate the rebels of the past—Jefferson and Paine, Emerson and Thoreau—while we silence the rebels of the present.

"Commager, "Who is Loyal to America?" in *Primer of Intellectual Freedom* (1949), edited by Howard Mumford Jones, 30.

'We are a rebellious nation,' said Theodore Parker, known in his day as the Great American Preacher, and went on: 'Our whole history is treason; our blood was attainted before we were born; our creeds are infidelity to the mother church; our constitution, treason to our fatherland. What of that? Though all the governors in the world bid us commit treason against man, and set the example, let us never submit.'"²²

Surely there is nothing more truly "un-American" or more hostile to the "principle of the form of government as guaranteed by our Constitution" than the attempt by a governmental body to compel conformity. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." *West Virginia Board of Education v. Barnette*, 319 U. S. 624, 642. See, also, Jackson, J., concurring in *Thomas v. Collins*, 323 U. S. 516, 545.

The legislative background of the term "un-American" in no way serves to sharpen its meaning. Thus, when the House passed Resolution 282 in 1938, members unsuccessfully demanded the insertion of controlling or limiting standards with respect to the meaning of the term "un-American":

"Mr. Patrick. It seems to me the most important thing involved in this matter is what is an un-American and what is an American activity? Who is to pass on that question?

²² Compare the concurring opinion of Justice Jackson in *American Communications Association v. Douds*, 339 U. S. 382, 440, footnote 12.

"Some things have been mentioned that perhaps we would concede to be un-American. But what is un-Americanism?

" . . . what will determine when anything is un-American so that we can put a finger on it and say that is it?

"Mr. Taylor. The Congress will finally prescribe that.

.

"Mr. Maverick. Nobody knows what is un-American. I ask you what is un-American?

"Mr. Knutson. The goose-step." "

In 1940, during the debate on the re-enactment of the basic resolution (86 C. R. 570-604), the members of the committee expressed conflicting views on the meaning of the term "un-American." "

The lack of meaning of the term "subversive" was complained of by Representative Outland in 1943:

"Just what are subversive activities? Who is to be the judge? There have been people who have called the chairman of the committee subversive, which in my

" 83 C. R. 7572, 7576 (1938). In the course of a debate on a prior resolution along similar lines the proponents refused to indicate its meaning when Representative Johnson asked:

"What I would like to find out is what is un-American."

H. Res. 88, 75th Cong., 1st Sess., 81 C. R. 3286 (1937).

In answer to a prior similar question, the member in charge of the resolution stated:

"The committee may read this resolution and put whatever interpretation they see fit upon it without any limitation so far as I am concerned" (81 C. R. 3285).

The resolution failed to pass.

" One member of the committee defined un-American activities as "organizations and groups . . . which are directed, controlled and subsidized by foreign agencies or governments" (86 C. R. 576).

opinion is entirely incorrect. But the permitting of individual interpretation of just what is deemed subversive is a dangerous and un-American thing." "

This question was asked after almost five years of investigation and committee reports. No answer to it is recorded.

The Committee recognizes no meaningful limitations at all on the permissible range of its activities. Thus, when Representative Wood was chairman of the Committee he stated at one of its hearings, "The committee is empowered to investigate any activities of any organization or any individual. The committee conceives it to be within its scope to investigate the activities of any organization that expounds American (sic) principles of government." "

In the same vein are the statements of Representative Jackson:

"I regard anything as a proper subject for investigation and interrogation by this committee which has affiliated with it a considerable number of individuals who are either themselves members of the Communist Party or who have for many years followed the Communist Party line.

.

Is there any phase of life in this country which is not subject to the propaganda activities of the Communist Party? " "

" 89 Cong. Rec. 806 (1943).

" *Communist Party* (1945) 31.

" *Los Angeles Area* (1953) 619, 645.

C. The Committee's Consistent Interpretation of the Resolution Establishes Its Unconstitutionality.

The Committee has condemned as "un-American," or "subversive" criticism of individual members of Congress, of the FBI, and espousal of liberal legislative programs," belief in the extension of universal suffrage and the raising of wages and the standard of living;" signing a letter in behalf of Harry Bridges and speaking favorably of sit-down strikes;" advocacy of anti-poll tax legislation, activity on behalf of the Scottsboro defendants and support of the Morgenthau plan for Germany;" and criticism of the McCarran-Walter Immigration Act."

In recent years the Committee has condemned criticisms of blacklisting (Hearings, 1956)" the American cultural exchange program (Hearings, 1959)," lawyers who have opposed the Committee (1959)" the National Council of

" Ogden, *The Dies Committee* (1945) 236-237; *New York Times*, Feb. 23, 1941; 3 *Motion Picture Industry* (1951) 669; 77th Cong. 2d Sess., H. Rept. 2277 (1942), 2; 2 *Communism in the Government* (1950) 2959-2985, testimony of Max Lowenthal (the subpoenaing of Lowenthal in these hearings was considered an attempt to discredit an individual solely because he had written a work critical of the FBI, see Carr, *House Committee on Un-American Activities* (1952) 202-203); *Infiltration-Education* (1953) 1088-1089.

" *Investigation of Un-American Propaganda Activities* (Exec.) 1299-1300.

" 78th Cong. 2d Sess., H. Rept. 1311, *Report on the CIO Political Action Committee* (1944), 82.

" 80th Cong. 1st Sess., H. Rept. 592, *Report on the Southern Conference for Human Welfare* (1947), 4, 10.

" *G. Bromley Oznam*, 116-117.

" *Fund For the Republic*, Parts 1, 2 and 3 (1956).

" *American National Art Exhibition in Moscow*, July 1, 1959.

" *Communist Legal Subversion*, H. Rep. No. 41, February 16, 1959.

Churches and liberal christianity (Hearings, 1960)¹⁰⁰ the scholarship program of the National Science Foundation (*Annual Report*, 1961, p. 93), the movement to check or abolish the Committee itself (1962)¹⁰¹ the peace movement and the Women Strike For Peace (Hearings, 1962)¹⁰²

The Committee's efforts to give shape to its jurisdiction are not reassuring. In one of its early reports, the Committee made an attempt to comment on the meaning of the term "un-American" and emphasized that "Americanism recognizes the existence of a God and the all important fact that the fundamental rights of man are derived from God and not from any other source." This report suggests that the following *inter alia* are Communist and therefore "un-American": "absolute social and racial equality"; "the destruction of private property and the abolition of inheritance" (apparently irrespective of the means employed or advocated); "the substitution of communal ownership of property for private ownership"; belief that it is "the duty of government to support the people"; "a system of political, economic, or social regimentation based upon a planned economy"; "collectivistic philosophy"; and "the de-

¹⁰⁰ *Air Reserve Center Training Manual*, February 25, 1960.

¹⁰¹ The Committee devotes not inconsiderable energy to defending itself and attacking its enemies as subversive. See:

"Operation Abolition," H. Rept. 2228 (86th Cong. 2nd Sess.) (a film);

The Truth About Operation Abolition, H. Repts. 1278, Parts 1 and 2 (87th Cong. 2nd Sess.);

Manipulation of Public Opinion, H. Rept. 1282, Parts 1 and 2 (87th Cong. 2nd Sess.);

Hearings, The Communist Party's Cold War Against Congressional Investigation, October 10, 1962.

See also Barenblatt, *supra*, note 33 (dissenting opinion).

¹⁰² *Communist Activities in the Peace Movement* (1962).

struction of the American system of checks and balances with its three independent coordinate branches of government." ¹⁰³

In its 1940 report, the Committee set forth the following definition of "un-American":

"By un-American activities we mean organizations or groups existing in the United States which are directed, controlled or subsidized by foreign governments or agencies and which seek to change the policies and form of government of the United States in accordance with the wishes of such foreign governments." ¹⁰⁴

On July 18, 1946, the chief counsel of the Committee wrote Congressman Doyle: "The committee has adopted no definition of subversive or un-American activities." ¹⁰⁵ Mr. Doyle commented:

"Ever since I became a member of this Seventy-ninth Congress, I have sought to ascertain by what definition of 'subversive activity' or 'un-American activity' a person was to be measured as either a loyal or disloyal American citizen. No one seemed to find any high court definition used by the House Committee nor could I find any printed or any announced definition which the committee had to either guide or limit its activities.

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"This illustrates that there can be at present as many definitions of 'subversive and un-American' as

¹⁰³ 76th Cong., 1st Sess., H. Rept. 2 (1939), 10, 12.

¹⁰⁴ 76th Cong., 3d Sess., H. Rept. 1476 (1940), 2.

¹⁰⁵ 92 C. R. A4743 (1946).

there are committee members. In fact, I think I notice that there is some sharp difference of opinion expressed by committee members on this point."¹⁰⁶

In 1945, the Committee found it necessary to farm out the resolution to the Brookings Institution for interpretation.¹⁰⁷ In 1954, in its informational pamphlet "This Is YOUR House Committee on Un-American Activities" the Committee defined (at p. 2) "un-American or subversive activity"¹⁰⁸ as, "That activity which attacks the principle of the form of government as guaranteed by our Constitution is un-American and subversive by seeking to overthrow it by use of force and violence, in violation of established law." Yet under the heading "Subversive Activities" in the pamphlet containing the above definition, the Committee went far beyond the overthrow of the government by force and violence and dealt with "Communist fronts" (p. 21); Fascists or "hate" groups (p. 21); "fellow-travelers" (p. 24); teachers who claim the Fifth Amendment (p. 23); etc. In 1958 when the pamphlet was superseded by "The House Committee on Un-American Activities, What It Is—What It Does" (86th Cong. 1st Sess.) the old definition was dropped and no new one substituted.

In 1961, the then Chairman of the Committee defined "un-American" as "any activity that strikes at the basic concept of our Republic" but denied that the Committee had juris-

¹⁰⁶ *Ibid.*

¹⁰⁷ *Suggested Standards For Determining Un-American Activities*, The Brookings Institution (Washington, 1945).

¹⁰⁸ On the disappearance of the word "propaganda" see, *infra*.

diction over the Ku Klux Klan.¹⁰⁹ In 1965, after long hesitation, the Committee decided to undertake an investigation of the Klan¹¹⁰ and based its authority on the 1945 Brookings Institution study, *supra*, which, in the intervening twenty years had never been used by the Committee as a guide to its jurisdiction.¹¹¹

¹⁰⁹ In a telecast ("Youth Wants to Know") on January 28, 1961, Representative Walter gave an interrogator the following account of the limitations on the Committee's jurisdiction:

"Question: Sir, for our own information, could you tell us just what is considered un-American, by your Committee?

"Representative Walter: Well, any activity that strikes at the basic concept of our Republic.

"Question: Sir, don't you agree that such subversive organizations as the American Nazi Party and Ku Klux Klan constitute a threat to the liberties of Americans?

"Representative Walter: I don't think so. Actually, they haven't engaged in any activity on behalf of a foreign power and that, of course, is the big difference.

"Question: But, sir, don't you believe that the suppression of minorities is against the Constitution of the United States?

"Representative Walter: Of course, it is, but it is not within the jurisdiction of the Committee on Un-American Activities to make inquiries into that field. Our inquiries are limited by the statute creating the Committee, and this, of course, is Communism and Communist activity."

¹¹⁰ The investigation of the Ku Klux Klan was demanded by the Committee member Weltner on February 1, 1965. See 111 Cong. Rec. 1592, Feb. 1, 1965 (Daily Edition). On March 30th, 1965, after a prolonged preliminary probe, an investigation of the Klan was approved by the Committee. The debate on the resolution authorizing the investigation appears at 111 Cong. Rec., pp. 7740, 7750, April 14, 1965 (Daily Edition). See, also, *New York Times*, March 31, 1965; March 29th, 1965; February 26, 1965.

¹¹¹ See 110 Cong. Rec. 7745, April 14, 1965 (Daily Edition). The reasons for the Committee's failure to use the Brookings definition of "un-American" are hardly inscrutable. It states that it is "un-American for any individual or group by force, intimidation, deceit, fraud or bribery, to prevent or seek to prevent any person from exercising any right or privilege which cannot constitutionally be denied to him either by the Federal Government or by a State government." The Committee has been historically reluctant to identify its jurisdiction with constitutional protection for that would undermine its entire *raison d'être*.

The Committee stretches the resolution to its widest scope in attacking organizations. The Committee regards certain organizations and movements as "subversive" because of their alleged domination by the Communist Party, because they entertain particular objectives which Communists also entertain, because they have never been aggressively anti-Communist, because their officers, sponsors or members have been exposed by the Committee as "subversive,"¹¹² or because some other committee or officer of government has "cited"¹¹³ them as "subversive" organizations. The Committee has devised an elaborate terminology of organizational condemnation: "Communist-dominated," "Communist front," "Communist satellite," "Communist transmission belt," "arm of the Communist Party," "formed to advance Communist aims."¹¹⁴

The Committee attacks organizations in four inter-related ways. First, some of its reports deal exclusively with organizations; for example, in 1944 it issued a report exposing the CIO Political Action Committee (78th Cong., 2d Sess., H. Rept. 1311); in 1947 it issued reports, among others, on the Southern Conference for Human Welfare (80th Cong., 1st Sess., H. Rept. 592) and on the Civil Rights Congress (80th Cong. 1st Sess., H. Rept. 1115); in 1949, it issued a "Review of the Scientific and Cultural Conference for World Peace;" in 1950, the organizations reported

¹¹² This exposure in turn frequently rests upon the individual's relationship to other organizations deemed by the Committee to be "subversive."

¹¹³ The counterpart in the organizational field of "exposure."

¹¹⁴ The standards employed by the Committee in thus condemning organizations are analyzed in Gellhorn, *Report on a Report of the House Committee on un-American Activities*, 60 Harvard L. R. 1193.

on included the National Lawyers Guild, the National Committee to Defeat the Mundt Bill, and the *Honolulu Record*; and in 1952, it issued, among other attacks on organizations, a "Review of the Methodist Federation for Social Action."

Second, in the course of its hearings the Committee questions the witness concerning his relationship with particular organizations. It then puts into the record its own charges concerning the organization and its "subversive" nature.

Third, in its annual reports, the Committee singles out particular organizations or causes and denounces them as subversive.

Fourth, as a separate project, the Committee has its own listing of organizations. This *Burke's Peerage* of organizational "subversion" is not a report on legislation or a legislative subject matter. It is not a report to Congress at all. The 1957 *Guide to Subversive Organizations and Publications* (82d Cong., 1st Sess., H. 137), lists in alphabetical order some 639 organizations and 204 publications and identifies the government agencies which have cited them adversely. A striking characteristic of the list is the fact that many of the citations turn out to be by the Committee itself, or by state committees of the same character. Among the organizations cited are Almanac Singers; Allied Voters against Coudert (a New York organization cited "as a Communist front" by the California Committee on Un-American Activities); American Committee for Anti-Nazi Literature (cited by California committee); American Committee of Liberals for the Freedom of Mooney and Billings; American Council, Institute of Pacific Relations (in response to this organization's request for the deletion of its name, the committee states that the characterization "will continue

pending the result of * * * investigations" by the California committee and a United States Senate committee); American Friends of Spanish Democracy; American Investors Union, Inc. (of "Communist complexion"); American Labor Party; American Round Table on India; American Relief Ship for Spain (cited by the committee itself as having "raised funds for the Communist end of that civil war"); Associated Magazine Contributors; Book Find Club; Citizens Committee to Aid Locked-out Hearst Employees; Committee for Civil Rights for Communists; Committee for Peaceful Alternatives to the Atlantic Pact; Committee to Defend Angelo Herndon; Connecticut State Youth Conference; Federated Press; Freedom from Fear Committee; Illinois People's Conference for Legislative Action; International Congress of Women; Jewish Black Book Committee of Los Angeles; League Against Yellow Journalism; League for Protection of Minority Rights; League of Women Shoppers; Methodist Federation for Social Service (cited by the California committee as having admitted "cooperation with * * * the Communists"); National Committee to Aid the Victims of German Fascism; National Committee to Defeat the Mundt Bill (cited from the committee's report on the organization, *supra*, as a group "which has carried out the objectives of the Communist Party in its fight against anti-subversive legislation"); National Lawyers Guild; National People's Committee Against Hearst; Milk Consumers Protective Committee; Joint Committee of Trade Unions on Social Work; Non-Partisan Committee for the Re-election of Vito Marcantonio; Progressive Citizens of America; Scottsboro Defense Committee; Sleepy Lagoon Defense Committee; Southern Conference for Human Welfare (cited by the committee because it "received money from the Robert

Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate"); Sweethearts of Servicemen (cited by the committee because "its maiden effort was a delegation of seventy-five young women who arrived in Washington to petition Congress 'to give their soldier boy friends and husbands the chance to vote in the 1944 Presidential elections'"); Teen-age Art Club; Washington (D. C.) CIO Committee to Reinstate Helen Miller; and Young People's Records. Among the publications listed as subversive are: *Allied Labor News Service*, *California Eagle*, *Chicago Star*, *China Aid News*, *Friday*, *Guild Lawyer*, *Honolulu Record*, *IJA Monthly Bulletin*, *In Fact*, *Labor Herald* (of the California CIO); *Lawyers Guild Review*; *Reader's Scope*.

The 1957 edition of the Guide was superseded by a revision in 1961. The new edition contained the names of 200 more organizations and 25 additional publications considered to be "subversive."

D. Conclusion.

From what has been said with respect to the indefiniteness of the resolution it seems incontrovertible that the resolution is unconstitutional. The resolution is not only hopelessly vague, but it would be difficult to find a more glaring example of over-regulation.

In none of the above cited cases (*supra*, pp. 99, 101) did the statute authorize or make possible the far-reaching abridgments of constitutionally protected rights which this resolution authorizes. In none of them was there presented the same combination of vagueness and extreme over-regulation. Professor Paul A. Freund has written:

"The problem of an overbroad statute, whether in the field of civil liberties or elsewhere, is really a special case of the problem of vagueness. A statute which is vague and indefinite—which prohibits, for example, 'unreasonable prices'—is of course insupportable unless what is indefinite is made definite in advance by authoritative construction. Essentially the same vice inheres in a statute that is overbroad. The terms themselves are not vague; a ban on all picketing is superficially precise. Yet the clarity of its language is delusive, since it will have to be recast in order to separate the constitutional from the unconstitutional applications. If it is read as applicable only where constitutionally so, the reading uncovers the vagueness which is latent in its terms.

" * * * The public interest in freedom of expression may serve to invalidate an overbroad statute that casts a cloud on expression both within and without the constitutional boundary.

"Can an overbroad statute be saved by construction? If the limiting construction is a relatively simple and natural one it can probably be made to save the statute."¹¹⁵

Certainly a limiting construction of the resolution would not be "a relatively simple and natural one." In any event, it is no longer a question of separating constitutionally permissible regulation of "propaganda" and "propaganda activities" from the constitutionally forbidden. The Committee has entirely abandoned the "propaganda" aspects of

¹¹⁵ *The Supreme Court and Civil Liberties*, 4 Vanderbilt L. Rev. 533, 540 (1951).

the resolution (see, for example, R. 1) in favor of the policing of a wide range of political expression and association¹¹⁶ which it was the key purpose of the First Amendment to safeguard against governmental invasion.

¹¹⁶ The word "propaganda" is never referred to by the Committee as its jurisdictional touchstone. Not only has the Committee rewritten its resolution but it insists that its rewritten version is correct. Congressman Doyle indicates the Committee's view as follows:

" . . . that law [Public Law 601] tells us to come to California and other cities all over the United States to make inquiry into subversive and un-American activities and communistic propaganda."

Los Angeles Area (1953), 680.

"Mr. Doyle: Our duty is to uncover subversive activities, wherever they are.

Miss Epstein: Propaganda activities.

Mr. Doyle: The word 'propaganda' I think is not in the text.

.

Mr. Doyle: I am directing your attention now to our direction that we investigate subversive activities.

.

Mr. Doyle: . . . What I am calling your attention to is this: You would expect us to investigate, therefore, under Point 2 [Public Law 601], subversive activities, wherever we find them, wouldn't you?

Miss Epstein: Subversive propaganda activities

.

Mr. Doyle: . . . We feel that the Communist Party . . . have been or are participating in subversive activities.

Miss Epstein: Propaganda.

Mr. Doyle: And propagandizing subversive activities. . . .

.

. . . we are asking about subversives wherever it exists.

.

Mr. Moulder: Do you have any knowledge concerning communistic or subversive activities whatsoever?

Miss Epstein: Are you talking about propaganda activities?

Mr. Moulder: Either one.

Miss Epstein: If you are talking about activities, I consider it outside of the scope of your inquiry. If you are talk-

IX.

Petitioner was not advised of the subject under inquiry or the pertinency of the individual questions.

Petitioner was denied an explanation of the matter under inquiry and the pertinency of the questions thereto as required by *Watkins v. United States*, 354 U. S. 178, 208-209,

ing about propaganda activities, I will stand on the Fifth Amendment. * * *"

Los Angeles Professional Groups (1953) 3926-3929.

"Mr. Doyle: * * * Under Public Law 601, the United States Congress by unanimous vote assigned each and every member of this committee * * * the obligation of investigating the extent and character and objects of subversive and un-American propaganda and activities in the United States.

* * *

Mr. Doyle: * * * You do not consider that because a man is a member of the bar he should not be questioned factually about subversive activities in the United States * * *?"

Ibid., 3937-3938.

"Mr. Doyle: * * * we are assigned to this sort of a hearing today in order to investigate the dissemination within the United States of anything that is subversive or un-American. * * * And our definite understanding is to investigate subversive and un-American conduct within our country. That is the law."

One must return to the model for the current Rule, the McCormack-Dickstein resolution, to recognize what an enormous distance the Committee has travelled from its intended scope and purpose and what a shambles it has made of its mandate. The McCormack-Dickstein resolution, *supra*, note 78, was unmistakably an investigation into foreign propaganda *and nothing more*. See 78 Cong. Rec. 4946 (Congressman Dickstein's statement of purpose); 78 Cong. Rec. 4934, 4937, 4938, 4940, 4944, 4945. The report of the committee (H. Rep. No. 153, 74th Cong., 1st Sess.) ultimately resulted in the passage of the Foreign Agents Registration Act, P. L. 583, 75th Cong. 3rd Sess., 52 Stat. 631.

Not only has the subject of the Rule been altered but its predicate has as well. While the Committee "make(s) from time to time investigations," it devotes a large part of its budget to the dissemination of its own propaganda and not investigating anything.

214-215. See also *Scull v. Virginia*, 359 U. S. 344, 353. The trial court rested its conclusion on the claim that the announcement by the subcommittee chairman of the purposes of the hearing communicated the subject matter of the hearing to petitioner (R. 111). But there is no showing at all in the record that petitioner was present when the announcement was made. It is true his counsel was also counsel for the first witness, but we think that the *Watkins* rule requires that the subject matter of the hearing and its pertinency be communicated to the witness and not to his counsel.

Petitioner's objections to the jurisdiction of the Committee hardly showed that he was aware of the Committee's purpose to question him as it did. Compare *Barenblatt, supra*, at 123. On the contrary, the objections assumed that the purpose of the Committee would follow the lines of the Chairman's announcement: to expose petitioner and to break the Union. Under these circumstances it cannot be said that the objections reflected an awareness of a contemplated subject under inquiry. In such an "inquiry" all questions are pertinent if only they are sufficiently embarrassing, if only they serve to harass and expose the witness and his associates. But "pertinent" means "pertinent to a subject matter properly under inquiry, not generally pertinent to the person under interrogation." *Rumely v. United States*, 197 F. 2d 166, 177 (App. D. C.); *United States v. Orman*, 207 F. 2d 148, 153 (C. A. 3).

It is equally fallacious to argue that the objections filed by petitioner did not impose a requirement on the Committee to explain the subject under inquiry and the "connective reasoning whereby the precise questions asked relate to it." See *Watkins v. United States, supra*.

The objections filed by petitioner obviously constituted an objection to *all* of the questions which might be asked on the ground that they were pertinent only to an illegal subject matter, namely, the exposure of himself and his union. Under these circumstances, it seems to us that the Committee was obliged to make clear to petitioner, both the nature of the subject matter under inquiry and the connective reasoning which made the questions pertinent. The Committee itself thought that petitioner's objections called for some response from it when they were filed. Although the Committee remained silent until all the questions had been asked which were in issue here, it ultimately dismissed the objections "*nunc pro tunc*" (*supra*, pp. 11-12). Obviously this retroactive rejection was inadequate to give petitioner notice either at the time his objections were filed or when the questions in issue were asked that the Committee thought the subject of the inquiry—a proper legislative subject—had been adequately communicated to him.

X.

Petitioner's objections were not timely overruled and he was not directed to answer.

Petitioner's motion (*supra*, pp. 10-11) sought to bring to the attention of the Committee facts relating to the announced purpose of the hearing in support of the contentions that (a) the Committee was not a competent tribunal in that it was seeking to exercise non-legislative powers; (b) it lacked jurisdiction; (c) its announced purposes were unauthorized by its basic resolution, and (d) the interrogation which the Chairman had announced it would undertake was barred by the First Amendment.

The Chairman's response to the filing of the motion was non-committal and it was rejected at the close of the questioning "*nunc pro tunc*" (*supra*, pp. 11-12).

When petitioner was sworn he attempted to state orally the gist of the objections filed in the motion (R. 241) but was interrupted by the Chairman who told him that he was not permitted to "make an opening statement preceding the testimony you are about to give." The witness continued to try to get into the record the grounds of his objections, but was again charged with violating the rules of the Committee. He stated he was merely seeking to explain his position (*ibid.*). Again he was told that he could not state his objections prior to his interrogation (R. 242). When the witness made a fourth attempt to present to the Committee the substance of the objections contained in the motion he was interrupted by the Chairman and told that his conduct was "not tolerated by the committee" (*ibid.*).

After answering a few preliminary questions, the witness tried for a fifth time to present to the Committee the objections which had been presented in the motion (R. 242): "Before I answer that question I want to explain that this is not a legislative investigation for a bona fide legislative purpose." But he was again rebuked for violating Rule IX of the Committee's rules which requires that copies of prepared or written statements be filed in advance with the Counsel of the Committee (*ibid.*)

Thereafter the witness repeatedly sought to place in the record, in explaining the grounds for his refusal to answer questions, some of the objections which had been advanced in the motion. However, he was systematically interrupted by the Committee members who prevented him from com-

pleting his objections (R. 254, 255, 263, 268, 296) and who were concerned only with establishing, for purposes of perfecting a contempt case,¹¹⁷ that the witness had not pleaded the Fifth Amendment (*ibid.*).

The subcommittee was required to overrule petitioner's objections, as stated in his motion, prior to the time he was forced to give testimony and to apprise him that it had overruled these objections, and to require him to proceed. *Quinn v. United States*, 349 U. S. 155; *Emspak v. United States*, 349 U. S. 190; *Bart v. United States*, 349 U. S. 219; and *Flaxer v. United States*, 358 U. S. 147.

The objections were manifestly not frivolous; they were presented in documented fashion and called for some response by the Committee. Not only did the Committee fail to overrule the objections in the motion, but it prevented the witness from presenting them orally (*supra*).

Nor did the Committee's direction to answer specific questions adequately discharge its responsibility, as defined by this Court. The Committee had made it clear (as in the *Bart* case, *supra* at 233), that it had no intention of ruling on the objections in the motion and petitioner had no way of knowing whether these grounds for his refusal had been considered and rejected. Besides, objections made by the witness to specific questions here were not co-extensive with the grounds urged in the motion. Since the subcommittee was required to communicate to the witness its response to *all* of his objections the fact that it directed him to answer after hearing some of them is no defense to our contention.

¹¹⁷ At the close of petitioner's testimony, the subcommittee voted to recommend that petitioner be cited for contempt (R. 380).

Thus, of the six grounds presented in the motion, only two were urged in response to the Count 1 question (R. 269-270); two, in response to the Count 2 question (R. 287-289); one to the Count 3 question (R. 284); one to the Count 4 question (R. 341-342); one to the Count 5 question (R. 362); and "for the reasons previously stated" to the Count 6 question (R. 366).

The court below noted, this is a "serious question" (R. 420) and it warrants reversal.¹¹⁸

CONCLUSION

For the foregoing reasons, it is prayed that the judgment of conviction should be reversed.

Respectfully submitted,

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¹¹⁸ The issue was suggested on the appeal but not explicitly raised until the petition for rehearing was filed. Compare *Süder v. United States*, 370 U. S. 717.

APPENDIX***Constitutional and Statutory Provisions
and Rules Involved***

The First Amendment to the Constitution of the United States provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment to the Constitution of the United States provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."

The Sixth Amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the prosecution; * * *"

2 U. S. C. Sec. 192, R. S. 102 (52 Stat. 942), as amended, provides:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee, established by a joint or concurrent resolution of the two Houses of Congress, wilfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 812, 823, 828) and House Resolution 5 (84th Congress) provide in pertinent part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"Power & Duties of Committees

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees respectively. . . .

.

"(q) (1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittees, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7 (c) F. R. Cr. Proc. provides in pertinent part as follows:

"The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count."

Rule I of the Rules of Procedure of the House Committee on Un-American Activities provides in pertinent part:

"No major investigation shall be initiated without approval of a majority of the Committee."

INDEX

	Page
Opinions of the Court	1
Questions presented	1
Statutes and rules involved	2
Statement	3
Summary of argument	3
Argument	16
1. The compelled disclosure of petitioner's Communist activities and associations was (there being no Fifth Amendment claim of self-incrimination) within the lawful power of Congress	20
A. The investigation of Communist activities, specifically in the labor field, serves a valid legislative purpose	23
1. Congress has power to require testimony, not otherwise privileged, in aid of an investigation into any proper subject of congressional legislation	22
2. Legislation safeguarding the national security against subversive activities of the Communist Party in general—and such activities in the labor movement in particular—is a proper subject of congressional consideration	29
3. An investigation of Communist infiltration of labor unions is, therefore, within Congress' power	37
B. The purpose of the questioning of petitioner was to elicit information relevant to a valid subject of legislation—rather than to expose him for the sake of exposure alone	38

Argument—Continued

C. Requiring petitioner to testify did not constitute a bill of attainder nor is the Committee's authorizing resolution unconstitutionally vague.....	48
D. Compelling disclosure of Communist Party activities in the circumstances of this case does not invade the freedoms of belief and association safeguarded by the First Amendment.....	51
II. The procedures of the investigating committee in this case were regular and proper, and furnish no ground for reversing petitioner's contempt conviction.....	66
A. The Committee approved the investigation of which the hearings at which petitioner appeared were a part.....	67
B. There was a proper delegation to the subcommittee of authority to conduct the hearings.....	68
C. Petitioner's claim that he was not apprised by the Committee of the pertinency of the questions that he refused to answer is not properly before this Court and, in any event, lacks merit....	71
1. Having failed to challenge the pertinency of the questions before the Committee, petitioner cannot now claim that he was not apprised of their pertinency.....	71
2. Petitioner was apprised of the pertinency of the questions.....	77
D. Petitioner was adequately apprised that his objections to the Committee's jurisdiction had been rejected.....	83
III. The indictment sufficiently alleged the authority of the subcommittee.....	85
Conclusion.....	92
Appendix I.....	93
Appendix II.....	100

CITATIONS

Cases:	Page
<i>Adler v. Board of Education</i> , 342 U.S. 485.....	34, 58
<i>Albertson v. Subversive Activities Control Board</i> , 382 U.S. 70.....	35
<i>American Communications Ass'n v. Douds</i> , 339 U.S. 382.....	30, 31, 32, 36, 39, 58, 59
<i>Anastaplo, In re</i> , 366 U.S. 82.....	34
<i>Anderson v. Dunn</i> , 6 Wheat. 204.....	24
<i>Aptheker v. Secretary of State</i> , 378 U.S. 500.....	34
<i>Arizona v. California</i> , 283 U.S. 423.....	41
<i>Barenblatt v. United States</i> , 360 U.S. 109.....	16,
18, 19, 21, 41, 42, 49, 51, 52, 54, 57, 58, 59, 60, 61,	
65, 73, 75, 76, 80.	
<i>Barry v. United States ex rel. Cunningham</i> , 279 U.S. 597.....	27
<i>Barsky v. United States</i> , 167 F. 2d 241, certiorari denied, 334 U.S. 843.....	46, 57
<i>Bart v. United States</i> , 349 U.S. 219.....	84
<i>Beilan v. Board of Public Education</i> , 357 U.S. 399.....	34, 58
<i>Braden v. United States</i> , 365 U.S. 431.....	16,
21, 51, 56, 57, 58, 59, 61, 66	
<i>Briggs v. MacKellar</i> , 2 Abb. Pr. 30.....	23
<i>Carlson v. Landon</i> , 342 U.S. 524.....	32, 58
<i>Chapman, In re</i> , 166 U.S. 661.....	25
<i>Communist Party v. Subversive Activities Control Board</i> , 367 U.S. 1.....	21, 33, 35, 58
<i>Cummings v. Missouri</i> , 4 Wall. 277.....	48
<i>DeGregory v. Attorney General</i> , 368 U.S. 19.....	56
<i>DeGregory v. New Hampshire</i> , No. 396, this Term, decided April 4, 1966.....	45, 56, 64
<i>Dennis v. United States</i> , No. 502, October Term, 1965, pending on writ of certiorari.....	31
<i>Dennis v. United States</i> , 171 F. 2d 986, affirmed on other grounds, 339 U.S. 162.....	57
<i>Dennis v. United States</i> , 341 U.S. 494.....	32, 57
<i>Deutsch v. United States</i> , 367 U.S. 456.....	19, 74, 83
<i>Eisler v. United States</i> , 170 F. 2d 273, certiorari dismissed, 338 U.S. 883.....	57
<i>Flemming v. Nestor</i> , 363 U.S. 603.....	33, 58
<i>Galean v. Press</i> , 347 U.S. 522.....	33, 58
<i>Garner v. Board of Public Works</i> , 341 U.S. 716.....	34, 58

Cases—Continued

CITATION

Gerende v. Board of Supervisors, 341 U.S. 50.....	34, 35
Gibson v. Florida Legislative Comm., 372 U.S. 639.....	14
Gojack v. United States, 280 F. 2d 678.....	31, 37, 38
Hale v. Henkel, 201 U.S. 43.....	15
Haristead v. Shaugnessy, 342 U.S. 580.....	71
Hutchesson v. United States, 369 U.S. 599.....	33, 38
Journey v. MacCracken, 294 U.S. 125.....	27, 28
Kilbourn v. Thompson, 103 U.S. 168.....	27
Konigsberg v. State Bar, 356 U.S. 36.....	23, 24, 25, 27, 29, 30
Kunz v. New York, 340 U.S. 290.....	24
Lawson v. United States, 176 F. 2d 49, certiorari denied, 339 U.S. 934.....	66
Lerner v. Casey, 357 U.S. 468.....	57
Marshall v. United States, 176 F. 2d 473, certiorari denied, 339 U.S. 933.....	34, 38
McCray v. United States, 195 U.S. 27.....	57
McGrain v. Dougherty, 273 U.S. 135.....	41
McPhaul v. United States, 364 U.S. 372.....	24, 25, 26
Morford v. United States, 178 F. 2d 54, reversed, 339 U.S. 258.....	40, 71
N.A.A.C.P. v. Button, 371 U.S. 415.....	40, 57
Norris v. United States, 257 U.S. 77.....	50
Osman v. Douds, 339 U.S. 846.....	70
People v. Keeler, 99 N.Y. 463.....	58
Quinn v. United States, 349 U.S. 155.....	27
Russell v. United States, 369 U.S. 749.....	23, 25
Sacher v. United States, 252 F. 2d 828, reversed, 366 U.S. 576.....	51, 55
Scales v. United States, 367 U.S. 203.....	1, 4, 15, 20, 36, 38
Shelton v. United States, 280 F. 2d 701, reversed on other grounds sub nom, Russell v. United States, 369 U.S. 739.....	37, 38
Sinclair v. United States, 279 U.S. 263.....	34, 38
Smith v. California, 361 U.S. 147.....	25, 27
Sweezy v. New Hampshire, 354 U.S. 234.....	50
Tenney v. Brandhove, 341 U.S. 367.....	60
Townsend v. United States, 95 F. 2d 352, certiorari denied, 303 U.S. 664.....	27
United States v. Brown, 347 U.S. 632.....	57
United States v. Board of Public Health, 341 U.S. 718.....	57

Cases—Continued

<i>United States v. Brown</i> , 381 U.S. 437.....	31, 35, 48
<i>United States v. Bryan</i> , 72 F. Supp. 58, reversed, 174 F. 2d 525, reversed, 339 U.S. 323.....	46, 58, 72, 73
<i>United States v. Carolene Products Co.</i> , 304 U.S. 144.....	64
<i>United States v. DeBrow</i> , 346 U.S. 374.....	88
<i>United States v. Fleischman</i> , 339 U.S. 349.....	46, 72, 73
<i>United States v. Josephson</i> , 165 F. 2d 82, certiorari denied, 333 U.S. 838.....	57
<i>United States v. Kamin</i> , 136 F. Supp. 791.....	58, 73
<i>United States v. Lamont</i> , 236 F. 2d 312.....	85, 90, 91
<i>United States v. Lattimore</i> , 215 F. 2d 847.....	57
<i>United States v. Lovett</i> , 328 U.S. 303.....	48
<i>United States v. Orman</i> , 207 F. 2d 148.....	57
<i>United States v. Rumely</i> , 345 U.S. 41.....	25, 27, 28
<i>United States v. Seeger</i> , 303 F. 2d 478.....	60, 85, 91, 92
<i>Uphaus v. Wyman</i> , 360 U.S. 72.....	45, 51, 54, 58
<i>Watkins v. United States</i> , 354 U.S. 178.....	22, 38, 42, 45, 50, 51, 55, 62, 64, 73
<i>Whitman v. United States</i> , No. 10, October Term, 1961.....	86
<i>Whitney v. California</i> , 274 U.S. 357.....	65
<i>Wilkinson v. United States</i> , 365 U.S. 399.....	16, 21, 41, 49, 51, 56, 59, 61, 66

Constitution:

Article I, Section 3.....	8
Article I, Section 9.....	18, 48, 51, 75
First Amendment.....	8, 9, 10, 21, 22, 51, 52, 53, 57, 58, 75, 76
Fifth Amendment.....	9, 16, 35, 51
Fourteenth Amendment.....	58

Statutes and rules:

Communist Control Act of August 24, 1954, c. 886, 68 Stat. 775, § 2 (50 U.S.C. 841).....	29, 39
Internal Security Act of 1950, § 5, 50 U.S.C. 784.....	33
Labor-Management Reporting and Disclosure Act, Sec. 504, 73 Stat. 536, 29 U.S.C. 504.....	31, 39
Legislative Reorganization Act of 1946, 60 Stat. 828.....	88, 89
National Labor Relations Act (Act of July 5, 1935), c. 372, as amended by the Labor Management Re- lations Act [of June 23], 1947, c. 120, § 101, 61 Stat. 146, § 9(h) (29 U.S.C. 159(h)).....	30, 31, 39

Statutes and rules—Continued

Subversive Activities Control Act of 1950, Act of September 23, 1950, 64 Stat. 987, as amended by the Act of August 24, 1954, § 10, 68 Stat. 778, 50 U.S.C. 792a.....	20
Sec. 2.....	20
Sec. 6.....	21
Revised Statutes, 102, 2 U.S.C. 182... 3, 4, 14, 19, 25, 50, 57	
Federal Rules of Criminal Procedure: Rule 7(c).....	3, 57
Rules of Procedure of the House Committee on Un-American Activities:	
Rule I.....	3, 19, 57
Rule XI of the House of Representatives, 60 Stat. 828.....	3, 4, 18, 49, 50, 68, 80

Congressional materials:

Hearings before the Committee on Un-American Activities, House of Representatives, 84th Cong., 1st Sess., entitled <i>Investigation of Communist Activities in the Fort Wayne, Ind., Area</i>	1
H. Res. 5, 84th Cong., 1st Sess.....	4, 50

Miscellaneous:

House Committee on Un-American Activities, 1954 Annual Report.....	67, 80
House Committee on Un-American Activities, 1955 Annual Report.....	67, 68, 100
Landis, <i>Constitutional Limitations on the Congressional Power of Investigation</i> , 40 Harv. L. Rev. 153... 23, 24, 25, 26	
<i>Official Reports on the Expulsion of Communist Dominated Organizations from the CIO</i> , compiled by the Publicity Dept., CIO (Sept. 1954, p. 13).....	54

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals on the judgment under review (R. 419-424) is reported at 348 F. 2d 355; the district court's opinion (R. 206-208) is not reported. The first opinion of the court of appeals is reported at 280 F. 2d 678, and the opinion of this Court reversing the court of appeals' first decision (*sub nom. Russell v. United States*) is reported at 369 U.S. 749.

JURISDICTION

The judgment of the court of appeals (R. 424) was entered on May 27, 1965, and a petition for rehearing was denied on July 23, 1965 (R. 435). On July 30, 1965, Mr. Justice White extended the time for filing

a petition for a writ of certiorari to and including September 21, 1965 (R. 436). The petition was filed on that day, and granted on December 6, 1965 (R. 437; 282 U.S. 937). The jurisdiction of this Court is invoked under 28 U.S.C. 1245(1).

QUESTIONS PRESENTED

Petitioner was convicted of contempt of Congress by reason of having refused (not on self-incrimination grounds) to testify at a hearing of a subcommittee of the Committee on Un-American Activities of the House of Representatives. The questions presented are as follows:

I

1. Whether the investigation exceeded the powers of Congress, on the theory that it had no *bona fide* legislative purpose but was conducted solely for the sake of exposure.

2. Whether subpoenaing petitioner to testify at the hearing constituted a forbidden bill of attainder.

3. Whether Rule XI of the House of Representatives—the mandate of the House Un-American Activities Committee—is unconstitutionally vague.

4. Whether petitioner's refusal to testify was protected by the First Amendment.

II

5. Whether the Committee (a) authorized the investigation in question and (b) delegated authority to conduct it to the subcommittee before which petitioner appeared.

6. Whether petitioner was adequately apprised of the pertinency of the questions that he refused to answer.

7. Whether he was adequately apprised that the subcommittee had rejected his objections to answering the questions.

III

8. Whether the indictment sufficiently alleged the subcommittee's authority.

STATUTES AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, Rule 7(c) of the Federal Rules of Criminal Procedure, and Rule I of the Rules of Procedure of the House Committee on Un-American Activities are printed in the appendix to petitioner's brief. See, also, p. 89, n. 58.

STATEMENT

INTRODUCTION

Petitioner was summoned as a witness before a hearing conducted early in 1955 by a subcommittee of the Committee on Un-American Activities of the House of Representatives as part of an investigation of Communist activities in the labor field. He refused to answer a number of questions put to him by the subcommittee, on a number of different grounds (not including self-incrimination). He was convicted upon an indictment returned in December 1955, of having wilfully refused to answer six questions pertinent to matters under inquiry by the Committee, in

violation of 2 U.S.C. 192. The conviction was overturned by this Court *sub nom. Russell v. United States*, 369 U.S. 749, on the ground that the indictment was defective. He was reindicted for the same offense and again convicted. The court of appeals affirmed, and the case is here on certiorari.

I. THE FACTS

A. THE BACKGROUND OF THE INVESTIGATION

As part of a continuing investigation into Communist activities in the labor field, including infiltration into labor organizations and dissemination of Communist labor propaganda, the House Un-American Activities Committee had been engaged intermittently in investigating alleged Communist Party activities by officials of the United Electrical, Radio and Machine Workers of America (U.E.) from August 1949 until February 1955 when petitioner appeared before the Committee (GX 11, 13; R. 17).¹ It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former member of the Communist Party, that the Communist Party had infiltrated the union to the extent that, of its important officials, "99.9 percent" were "pure Communist Party members" (R. 17-18). In July 1953 another former Communist Party member, Jack Davis, who had been an organizer for

¹ Rule XI of the House of Representatives, 60 Stat. 828, H. Res. 5, 84th Congress, authorizes the Committee to investigate un-American and subversive propaganda and activities. It is set forth in pertinent part at p. 89, n. 58, *infra*.

the U.E., testified that all of the U.E. organizers who attended meetings were members of the Communist Party (R. 18-19). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 19).

On February 9, 1955, at a meeting of the Committee held from 10 a.m. to 11 a.m. that day, seven members present, a motion was made and passed that petitioner be subpoenaed to appear "before a Subcommittee of the Committee on Internal Security" (*sic*) in open hearings at Fort Wayne, Indiana. At the same meeting, the Chairman of the Committee (Congressman Walter) appointed a subcommittee to conduct the Fort Wayne hearings (GX 5, R. 212-213; R. 10). On January 20, 1955, the Committee, in executive session, eight of the nine members being present, had adopted a resolution that its Chairman be authorized to appoint subcommittees "for the purpose of performing any and all acts which the Committee as a whole is authorized to perform" (GX 4, R. 209).

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana, on February 21 (R. 94, 123-124). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 123, 407). On February 10, Congressman Walter received a telegram from petitioner protesting on behalf of the union the scheduling of the hearings for February 21, in view of a National Labor Relations Board election scheduled to be held at the Magnavox plant on

February 24, 1955, involving the U.E. and rival unions (GX 9, R. 125-127). The telegram claimed, among other things, that the hearing would be a "flagrant use of a Congressional Committee for union-busting," that "we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union-busting," and that the Committee was run by "publicity-mad zealots" who "tarnish" the Congress with their "stench" (R. 125-127).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 115). Because of the tone of petitioner's telegram, Mr. Goldstein's request was heard before the Committee at a recorded session (R. 115-116, 119), at which the Chairman told Mr. Goldstein that the Committee had first learned of the NLRB election when the Chairman received petitioner's telegram (R. 116). The following exchange then took place (R. 116).

MR. GOLDSTEIN. Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the NLRB] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.

CHAIRMAN WALTER. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting.

Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Although repeatedly asked to do so (R. 117-119), Mr. Goldstein refused to state any definite knowledge he might have about an NLRB election. The Committee adjourned without any action being taken (R. 119).

Petitioner's subpoena to appear at the February 21 hearing, dated February 10, was served upon him on February 15, 1955 (R. 14, 95). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance until "any time after next week" because of the attorney's heavy schedule and the impending NLRB election at the Magnavox Company (R. 14). The request was at first denied. But, after further communication between counsel, Mr. Tavenner inquired into the proposed election and explained the situation to Chairman Walter, who agreed that the hearings be postponed (R. 15). By Committee resolution of February 23, 1955, the hearings were rescheduled for February 28, 1955, in Washington, D.C. (Gov't Ex. 7, R. 215). Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 15-16).

B. THE QUESTIONING OF PETITIONER

Petitioner appeared on February 28 and March 1, 1955, before the subcommittee (see p. 5, *supra*) in

Washington, D.C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the chairman, explained the purposes of the hearing as follows (R. 219):²

There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

There was testimony that petitioner was present when the hearing began (R. 103-109). Before the first witness, Julia Jacobs, was sworn, her attorney filed with the Committee, on her behalf and on behalf of two other clients of his, petitioner and Lawrence Cover, also subpoenaed to appear before the subcommittee (R. 220), a motion "for incorporation in the record" (DX 1; R. 83, 405-406) claiming that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses and that, in any event, under Article I, Section 3 of the Constitution only the courts can investigate crime; that the Committee's authorizing resolution did not give it the power to engage in breaking a union and that, if it purported to confer this power, it violated the First Amendment; that the

² GX 12 is the record of the Hearing before the Committee on Un-American Activities, House of Representatives, 84th Congress, 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Ind., Area*. The hearings appear at two points in the record. Portions appear at R. 42-82 as read by government counsel below, and the complete hearings so far as relevant to this case at R. 216-400.

authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the outset of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (R. 242). After a colloquy concerning "union busting," Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (R. 254-255). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of its general executive board (R. 261-262).

When asked whether he had ever been a member of the Communist Party while holding any of these union offices, petitioner stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting" (R. 263). The question was rephrased several times, but he still refused to answer, citing as ground for his refusal to answer that he had signed affidavits annually from 1949 to 1954 that he was not a Party member, and that the question violated the First Amendment (R. 262, 264). Petitioner was then asked whether he had ever been a member of the Communist Party (R. 265), and again invoked the First Amendment, disclaiming any reliance on the Fifth Amendment (R. 266). He was also asked whether he had been a Party member at any

time during 1948 (R. 268), and he refused to answer on the ground that the question violated the First Amendment and that the hearing had no legislative purpose (R. 268). He then refused to say whether he was "now a member of the Communist Party,"³ on the grounds that his affidavit stated that he was not a Communist, that the question violated the First Amendment, and that "I am not going to cooperate with union busters" (R. 269-270). The hearings were then adjourned for the day.

Petitioner was the first witness when the hearings were resumed on March 1, 1955. After further questions about Communist activities in labor unions (R. 271-273, 276), the Committee asked whether petitioner had attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 277). The Committee read to petitioner the minutes of the meeting, which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the *Daily Worker*. Petitioner could not recall these events, nor could he recall who was the Party secretary or chairman in Indiana at the time (R. 280). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 283). The Committee counsel asked petitioner whether he was acquainted

³ This refusal formed the basis of count one of the present indictment. See p. 15, *infra*. The other questions on which the indictment was based are indicated in the text.

with Elmer Johnson ' (R. 280). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (R. 287). Petitioner refused to answer this question (*count two*). He based his refusal on the ground of the Committee's alleged use of paid informers, whom he called liars, on the First Amendment, and on the Committee's lack of authority under its authorizing resolutions to break a union (R. 289-290).

After charging that a former member of the Committee had used a "paid liar's testimony to try to break [a] strike," petitioner refused to say whether he knew Henry Aron ' on the same grounds that he had refused to answer the earlier questions, particularly the First Amendment and the Committee's use of informers (R. 293-294). He was subsequently asked, and refused to answer on the basis of the First Amendment, whether Johnson or Aron had ever addressed a group of people when petitioner was present (*count three*) (R. 296). Petitioner was also questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (R. 305, 310, 319, 321-324, 334-338). During this discussion, after petitioner objected that the Committee was at-

'The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 21).

'The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 19-20).

tempting to find him guilty without a trial, Congressman Doyle stated (R. 327):

[W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

Petitioner testified that he knew a Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as legislative representative of the U.E. in Washington.* Petitioner said that he would not answer questions concerning political beliefs and affiliations because the Committee lacked jurisdiction (R. 340-342). He then refused for the second time to say whether he knew Russell Nixon to be a member of the Communist Party (*count four*), on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (R. 341-342).

The Committee's counsel handed petitioner a letter to him from Russell Nixon, sent immediately after a "peace pilgrimage" to Washington, enclosing a letter

* Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his alleged Communist Party activities (R. 73-76). Dorothy Funn, a former member of the Communist Party, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 28-32).

from the Metal Workers Trade Union, an organization that the Committee had reason to believe was Communist-dominated (R. 350, 352-357). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (R. 360). Committee counsel noted that petitioner had said that he had been involved in many meetings on behalf of peace, and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (R. 361). Petitioner then refused to answer the question whether he had taken "an active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (*count five*) (R. 361-362). When petitioner indicated that the basis of his refusal to answer was the First Amendment, the Committee counsel said (R. 362):

I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. * * *

Congressman Doyle said (R. 362-363):

Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a

member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused, on the grounds he had already stated, to say whether he had taken part in the pilgrimage to Washington, whether he was a member of the American Peace Crusade, and whether he had frequently served as chairman of its meetings (R. 366).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker, which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 368; see R. 22).¹ Petitioner refused, on the grounds he had previously stated, to answer the question who had solicited him as sponsor; nor would he say what method of solicitation had been used (*count six*) (R. 369).

II. THE PROCEEDINGS

A. THE FIRST TRIAL AND APPEAL

In December 1955, petitioner was indicted for willful refusal to answer questions pertinent to a subject under inquiry by Congress, in violation of 2 U.S.C. 192. The indictment was in nine counts, each based on the refusal to answer one of the questions put to peti-

¹ The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack," subtitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 22-25).

tioner at the Washington hearings. He was convicted on six of the counts and his conviction was affirmed by the Court of Appeals for the District of Columbia Circuit. *Gojack v. United States*, 280 F. 2d 678. This Court granted certiorari to review the judgment of the court of appeals (along with the judgments in five other contempt-of-Congress cases). A number of issues were tendered to the Court, but only one—common to all six cases—was decided. The Court held that the indictments of Gojack and the other defendants were insufficient because they did not allege the subject of the inquiry to which the questions asked were alleged to be pertinent. Accordingly, the judgment in Gojack's case was reversed. *Russell v. United States*, 369 U.S. 749.

B. THE SECOND TRIAL AND APPEAL

Gojack was reindicted for the same offense of which he had been convicted—that is, the alleged willful refusal to answer the six questions (R. 1-3). This time, the indictment set forth the subject of the Committee's inquiry. Petitioner waived trial by jury. He was found guilty on all six counts and given a general sentence of three months' imprisonment plus a \$200 fine (R. 8-9). Petitioner appealed. While not contending that the new indictment was deficient under the rule of this Court's *Russell* decision or that the Court's mandate had been disobeyed in redrawing the indictment, petitioner renewed the contentions he had made in the earlier round (and which this Court in *Russell* had not reached). The court of appeals unanimously affirmed the conviction (348 F. 2d 355), rejecting most of petitioner's grounds summarily

but discussing expressly petitioner's contention that the Committee had failed adequately to apprise him that his objections to the hearings had been overruled.

SUMMARY OF ARGUMENT

In this contempt-of-Congress case, petitioner raises numerous issues. They are of three kinds. First, there is a sweeping attack, under a variety of overlapping constitutional rubrics—the limits of the Legislature's powers, free speech, bill of attainder, vagueness—on the legitimacy of investigations by the House Un-American Activities Committee into Communist activities, petitioner's ultimate thesis being that the Committee is powerless (quite apart from problems of self-incrimination under the Fifth Amendment, which petitioner did not invoke) to compel the disclosure by witnesses of Communist activities and associations in the circumstances of this case—and indeed of all cases. We regard these broad contentions as foreclosed by the prior decisions of this Court in this field (*Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431; *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 547, 549), but, in view of the importance of the question, we devote Part I of our argument to its answer.

The second type of issue raised by petitioner (to which we devote Part II) relates to the particular procedures of the Committee in questioning petitioner. The issues here are less far-reaching; we show that they were correctly resolved below. In Part III, we take up another relatively narrow

issue—petitioner's challenge to the sufficiency of the present indictment—and show that petitioner's contention is without merit. Thus, we conclude, petitioner's conviction suffers from no infirmity warranting reversal.

I

It is fundamental, we think, that Congress could not adequately discharge its legislative functions if it were denied a broad power of inquiry and investigation (including the use of compulsory process to elicit testimony not otherwise privileged) into subjects of proper legislative concern. This Court has many times declared—and numerous legislative enactments upheld by this Court attest—that Communist activities are such a subject. We therefore regard as settled the proposition that Congress has a valid and lawful interest in conducting investigations with the object of obtaining information concerning such activities as a possible predicate of appropriate antisubversive legislation.

The hearings at which petitioner was questioned were part of such an investigation. Communist infiltration of labor unions has been a continuing topic of congressional concern and legislation, and the House Un-American Activities Committee had reason to believe both that the union of which petitioner was an important official was dominated by Communists and that petitioner could supply valuable information concerning Communist activities in the union. The questioning of petitioner by the Committee was designed to elicit such information, clearly relevant to a proper subject of legislation.

Against this background, petitioner's attack upon the constitutional legitimacy of the Committee's questioning of him must, in our view, fail. Petitioner to the contrary notwithstanding, the purpose of the investigation was not exposure for exposure's sake. Rather, the objective was to gather evidence in an area of legitimate congressional concern. In light of this valid legislative purpose, there is no occasion to search the motives of individual members of the Committee.

Once the existence of a valid legislative purpose is established, other broad arguments advanced by petitioner likewise fall. Since exposure for its own sake was not the purpose of the hearing, there can be no contention that petitioner was the victim of a bill of attainder—even under petitioner's view of the scope of the Attainder Clause. And Rule XI of the House of Representatives (which authorizes the House Un-American Activities Committee to investigate un-American and subversive activities and propaganda) is not unconstitutionally vague, as petitioner contends. It is not a mandate for improper investigations, nor even a penal or prohibitory statute. Moreover, the particular subject of a hearing at which a witness is questioned must be adequately defined and explained in advance (as it was here), thereby dispelling any possible uncertainty.

Finally, petitioner's freedom of belief or association was not infringed by compelled disclosure of facts pertinent to a legitimate subject of congressional inquiry and legislation. Applying the standards of *Barenblatt v. United States* and the cases following it

(pp. 54-59, *supra*), we think that the strong public interest in this investigation and in eliciting the testimony sought from petitioner outweighed his interest in maintaining secrecy. Indeed, as we explain, this is an *a fortiori* case in this regard compared to the prior cases.

II

Petitioner's challenge to the specifics of the Committee's proceeding is likewise without merit. Plainly, the investigation in the course of which petitioner was subpoenaed to testify was approved by the Committee as required by its Rule I; and plainly, too, the Committee properly delegated its authority to conduct the hearings in question to the subcommittee that conducted them. Since petitioner failed to raise at the hearings the issue whether he was adequately apprised by the Committee that the questions he refused to answer were pertinent to the subject under inquiry (as required by 2 U.S.C. 192), that issue is foreclosed here (*Barenblatt v. United States*, 360 U.S. 109; *Deutch v. United States*, 367 U.S. 456); but in any event the Committee gave petitioner repeated detailed explanations of the pertinency of the questions and it is clear that he was in fact fully apprised thereof. Petitioner's contention that the Committee was required, and failed, to overrule his written objections to the Committee's jurisdiction before he was questioned was never raised in the courts below and hence also is not properly before this Court. Nor is there merit in the claim. The record establishes that petitioner's objections were rejected and that he knew such to be the case. In short, none of

the alleged defects in the Committee's procedures in this case constitutes reversible error.

III

The indictment—cured, as all agree, of the deficiency found by this Court when last the case was here—was sufficient. It not only alleged that the hearings at which petitioner was questioned were authorized by Congress (all we think need be alleged); it also set forth the entire chain of authority from Congress to the particular subcommittee that conducted the hearings in question. No link in the chain was omitted, and surely no further allegations of authority were necessary to enable petitioner to prepare his defense. Applying the general principles underlying this Court's decision in *Russell v. United States*, 369 U.S. 749, we believe that the indictment was clearly adequate.

ARGUMENT

I. THE COMPELLED DISCLOSURE OF PETITIONER'S COMMUNIST ACTIVITIES AND ASSOCIATIONS WAS (THERE BEING NO FIFTH AMENDMENT CLAIM OF SELF-INCRIMINATION) WITHIN THE LAWFUL POWER OF CONGRESS

We first consider the broad question, raised by petitioner in a variety of guises, whether it is within the lawful power of Congress to investigate (with the aid of compulsory process) Communist activities and associations, in general, and this petitioner's activities and associations, in particular. We preface our discussion of this point with a review of settled principles governing the investigative power of Congress, and its application in the field of subversive activities.

Actually, however, petitioner's broad attack on the authority of congressional committees to compel disclosure of subversive activities and associations in the circumstances of the present case is foreclosed by this Court's prior decisions. In *Barenblatt v. United States*, 360 U.S. 109, the Court held that the use of compulsory process to elicit testimony in aid of congressional investigations of Communist activities, in circumstances comparable to those of the present case, has a valid legislative purpose and does not violate the First Amendment. This holding was reaffirmed in *Wilkinson v. United States*, 365 U.S. 399, and *Braden v. United States*, 365 U.S. 431. And, just two Terms ago, in *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 549, the Court noted that it is constitutionally "permissible [for the Legislature] to inquire into the subject of Communist infiltration of educational or other organizations," because the "governmental interest in controlling subversion and the particular character of the Communist Party and its objectives outweigh the right of individual Communists to conceal party membership or affiliations." Communist Party membership is "a permissible subject of regulation and legislative scrutiny." P. 547.

Petitioner to the contrary, there is no occasion to reconsider those decisions.* The underlying principle

* Petitioner asks overruling of these cases on the ground that in recent years the menace of Communism has subsided. But, surely, this is an argument properly addressed to Congress, not this Court; it calls for a legislative judgment. Cf. *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1. In any event, the argument is hardly pertinent here, since the hearings at which petitioner refused to answer the Committee's

of the cases—that in requiring a witness to testify concerning subversive Communist activities Congress is exercising an inherent power to investigate and does not violate the First Amendment—is in accord with our constitutional history and is sustained, as we shall show, by a score of related precedents resting upon the same hypothesis concerning the nature of the Communist movement.

A. THE INVESTIGATION OF COMMUNIST ACTIVITIES, SPECIFICALLY IN THE LABOR FIELD, SERVES A VALID LEGISLATIVE PURPOSE

1. Congress Has Power To Require Testimony, Not Otherwise Privileged, in Aid of an Investigation Into Any Proper Subject of Congressional Legislation

In *Watkins v. United States*, 354 U.S. 178, the Chief Justice wrote (p. 187):

The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. * * *

History—and this Court's decisions—confirm that this inherent constitutional power to compel testimony in aid of investigations extends to any subject upon which Congress has power to legislate. Early in the sixteenth century (and increasingly after the Revolution of 1688 established the supremacy of Parliament) Parliament as a whole, or one of its

questions were held in 1955—one year after the hearings involved in *Barenblatt* and three years before those involved in *Braden* and *Wilkinson*.

many committees, conducted investigations compelling the production of persons or papers during its investigations. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 159-164. These powers were carried over to the United States both in the colonial and later in the State legislatures, and until 1880 no State court denied or even limited the power of a State legislature to investigate. Landis, *supra*, pp. 165-167.* The power of Parliament to investigate was also, it appears, vested in Congress." At the time of the constitutional convention, legislative power in common-law countries included the power to form

*The basis of this power in the United States was aptly summarized by a New York court (*Briggs v. MacKellar*, 2 Abb. Pr. 30, 56-57):

It is a well-established principle of this parliamentary law, that either house may institute any investigation having reference to . . . any matter affecting the public interest upon which it is important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function . . . In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee, is, as a parliamentary usage, as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees, and to punish for disobedience, has been frequently enforced.

"In *Kilbourn v. Thompson*, 103 U.S. 168, 189, this Court said that the history of investigations by Parliament was not relevant to Congress' powers since Parliament had both judicial

investigative committees authorized to send for persons and papers, and this practice was followed in numerous congressional investigations beginning as early as 1792. Landis, *supra*, pp. 168-191. Since the Civil War, moreover, Congress has increasingly relied on investigations using compulsory process to determine whether and how it should legislate.

Until comparatively recently, the courts rarely ruled on the power of Congress to investigate, for the power was seldom challenged. See Landis, *supra*, p. 212." But the early case of *Kilbourn v. Thompson*, 103 U.S. 168, did impose an important limitation. There, a witness was arrested by the House for refusing to answer questions asked by a committee that was investigating a bankruptcy which had resulted in losses to numerous creditors, including the United States. This Court did not find it necessary to decide whether Congress had investigatory powers as part of its legislative function, for it held that the investigation was not into the administration of the government or into the need for new legislation, but rather into the "private affairs of individuals." P. 195.

and legislative powers and its investigations were carried out under the former power. However, Professor Landis has shown that, by the time Parliament conducted investigations, it had only legislative powers, and that therefore Congress' power can be traced back directly to the practices of Parliament. This view was accepted by this Court in *McGrain v. Daugherty*, 273 U.S. 135, 161.

"As early as 1821, however, in *Anderson v. Dunn*, 6 Wheat. 204, this Court sustained the power of the Speaker of the House to convict a person for attempting to bribe a member. The Court held that this power was necessarily implied in order for the legislative power to operate (pp. 226-227).

This subject was already before a federal court in a bankruptcy proceeding, and the Court held that Congress had no judicial power to conduct a similar proceeding.

Kilbourn v. Thompson thus established the eminently sound principle that the power of Congress is not to prosecute, expose, or put on trial. But nothing in that decision cast doubt upon the power of Congress to investigate where it had a proper legislative purpose.¹² The later decisions confirm the power and emphasize its breadth. *In re Chapman*, 166 U.S. 661, sustained the power of a Senate committee to require a witness to testify concerning allegedly corrupt influences attempted to be exerted during the Senate's consideration of a tariff bill, and also upheld the constitutionality of Section 102 of the Revised Statute (the predecessor of the statute (2 U.S.C. 192) under which petitioner was convicted), which gave the federal district courts power to punish for contempt of Congress. The Court stated that a house of Congress could investigate any matter within its jurisdiction. Pp. 667, 671.

¹² Insofar as *Kilbourn* may suggest a strict and unfriendly interpretation of the purpose of a congressional investigation or a niggardly view of the constitutional power to investigate, we submit that this decision is no longer authoritative. This Court in *United States v. Rumely*, 345 U.S. 41, 46, characterized *Kilbourn v. Thompson* as having included "loose language," as having been subjected to "weighty criticism," and as having been eroded by the later decisions in *McGrain v. Daugherty*, 273 U.S. 135, and *Sinclair v. United States*, 270 U.S. 263. See, also, Landis, *supra*, pp. 214-220.

In *McGrain v. Daugherty*, 273, U.S. 135, the Court expanded on this theme, holding upon an extended consideration of policy and authority that a house of Congress has the power to compel witnesses before one of its committees to give testimony needed to legislate, and to punish the witness for contempt if he refuses to comply.¹³ Relying on the history of investigation by Parliament, the colonial and State legislatures and Congress itself, statutes enacted by Congress, and numerous decisions by State courts (pp. 161-168, 174) the Court stated that "[i]n actual legislative practice power to secure needed information by [investigation] has long been treated as an attribute of the power to legislate" (p. 161) and that "the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function" (p. 174).¹⁴ In response to an argument

¹³ The facts there were that the Senate was holding a witness in custody, pending trial before the Senate itself, for refusing to appear before a committee investigating the administration of the Department of Justice.

¹⁴ As the Court explained (p. 175):

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and when the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed was treated as inhering in it.

that the purpose of the investigation was not in aid of legislation, the Court answered that "the subject was one on which legislation could be had" and that, in the absence of contrary evidence, "the presumption should be indulged that this was the real object." Pp. 177, 178. It quoted with approval (p. 178), the statement of the New York Court of Appeals (*People v. Keeler*, 99 N.Y. 463, 487) that "[w]e are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed * * *."

In *Barry v. United States ex rel. Cunningham*, 279 U.S. 597, the Court applied the same fundamental principles to an investigation of corruption in a Senate election, saying that "if judicial interference can be successfully invoked it can only be upon a showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law." P. 620. See, also, *Journey v. MacCracken*, 294 U.S. 125. And in *Tenney v. Brandhove*, 341 U.S. 367, the Court stated that "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." P. 378. See, also, *Sinclair v. United States*, 279 U.S. 263; *Hutcheson v. United States*, 369 U.S. 599, 618."

"In *United States v. Rumely*, 345 U.S. 41, the Court reversed a conviction for contempt on the ground that the resolution which authorized the committee to investigate lobbying activities did not encompass an investigation of efforts to influence the public generally. The Court construed the resolution narrowly to avoid a serious issue under the First Amend-

It remains only to observe that, in a democracy, the power of Congress to conduct investigations to compel the attendance of witnesses and the production of papers, and to punish disobedience as contempt, arise out of necessity and are inherent in the legislative process. As Professor Landis wrote (*supra*, pp. 209-210):

Little need be said of the necessity for investigation where new problems are faced by Congress to be met with different devices for legal control. To deny Congress power to acquaint itself with facts is equivalent to requiring it to prescribe remedies in darkness. The use of committees for such purposes is, perhaps, most common. In 1892 the activities of the Pinkerton Detective Agency as strike breakers in the railroad troubles in the West, caused investigations to be conducted by both Senate and House. Such investigations have left major imprints upon legislation. The Court of Customs Appeals owes its origin thereto; restrictions upon the immigration of foreign contract labor followed upon the work of a House committee in 1889; the Transportation Act of 1920 followed in part the recommendations of the joint subcommittee of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce, appointed by the Act of July 20, 1916. Whether existing legislation protects competing interests, whether governmental con-

ment, but did not resolve this issue. Of course, the First Amendment issue in *Rumely* did not involve the question whether Congress can constitutionally investigate Communist activities, the issue here.

Control should penetrate still further into fields of private endeavor, whether conditions are critical enough to demand legislative interposition—answers to such problems require knowledge. For its attainment Congress has appointed committees authorized to inquire and to demand all necessary information; it cannot escape in the future from employing the same device.

While the power to investigate is broad, its lawful exercise depends upon the existence of a valid legislative purpose (*Kilbourn*). We must accordingly consider whether Communist Party activities—specifically in the labor field—can be a permissible subject of congressional legislation. Plainly, as next we show, they can be.

2. Legislation Safeguarding the National Security Against Subversive Activities of the Communist Party in General—and Such Activities in the Labor Movement in Particular—Is a Proper Subject of Congressional Consideration

In Section 2 of the Subversive Activities Control Act of 1950 (50 U.S.C. 781), Congress, on the basis of detailed investigations, found that there exists an international Communist movement, foreign controlled, whose purpose is to establish totalitarian Communist dictatorship by whatever means necessary throughout the world and which in furtherance of these purposes establishes in non-Communist countries organizations, dominated from abroad, that endeavor to bring about the overthrow of existing governments, by force if need be. In Section 2 of the Communist Control Act of 1954 (50 U.S.C. 841) Congress found and declared:

that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * * [T]he policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement.

Surely, it is not to be thought that Congress has no power whatsoever to enact legislation designed to prevent such a movement from infiltrating important areas of national life as part of a program to overthrow the government by force and violence. Appropriate measures designed to prevent a foreign-dominated conspiracy from overthrowing the government by such means are an exercise not only of inherent sovereign power but of the congressional duty to provide for the common defense. Accordingly, this Court has repeatedly upheld legislation predicated upon the view that the activities of the Communist Party endanger the security of the United States and are therefore a proper subject of congressional regulation. Some of the cases have evoked differences of opinion within the Court, but none of the opinions, whether for the Court or in concurrence or dissent, suggests that the activities of the Communist Party are immune from legislation. Nor is any such suggestion to be found in those decisions that have invalidated portions of such legislation.

In *American Communications Association v. Douds*, 339 U.S. 382, the Court had before it Section 9(h) of the National Labor Relations Act, which barred from

using the facilities of the National Labor Relations Board any union whose officers had not filed non-Communist affidavits. In sustaining Section 9(h)¹⁶ the Court squarely held that Communist activity in the labor movement is a fit subject of congressional concern. Mr. Justice Jackson's concurring opinion succinctly summarized the reasons for distinguishing the Communist Party from true political parties. "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." P. 424. Its goal is "*to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate*" (p. 425; emphasis in original); "*Violent and undemocratic means are the calculated and indispensable methods to attain [this] goal*" (p. 429; emphasis in original). It is "a secret conclave. Members are admitted only upon acceptance as reli-

¹⁶ In *United States v. Brown*, 381 U.S. 437, a successor provision to 9(h) (Section 504 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504), which made it a criminal offense for anyone who is (or, within the preceding five years, was) a member of the Communist Party to serve as an officer of any labor organization was held to be an unconstitutional bill of attainder. In *Dennis v. United States*, No. 502, October Term, 1965, pending on writ of certiorari, petitioner has asked that *Douds* be overruled on the authority of *Brown*. In neither case is there any issue, however, as to the basic power of Congress to regulate Communist activities by appropriate legislation.

able and after indoctrination in its policies, to which the member is fully committed." P. 432. Each member "pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded." *Ibid.* It, moreover, "alone among American parties past or present is dominated and controlled by a foreign government. It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands" (p. 427; emphasis in original).

The next case was *Dennis v. United States*, 341 U.S. 494, where the Court upheld the constitutionality, as applied to officers of the Communist Party, of the provisions of the Smith Act making it a crime for any person knowingly or willfully to advocate the overthrow of the government of the United States by force or violence or to organize any group which so advocates or to conspire so to advocate.

In *Carlson v. Landon*, 342 U.S. 524, the Court sustained the constitutionality of a provision of the Immigration Act allowing the Attorney General in his discretion to hold in custody without bail, pending determination of their deportability, aliens who are members of the Communist Party. The Court stated that "[w]e have no doubt that the doctrines and practices of Communism clearly enough teach the use of force to achieve political control to give constitutional basis, according to any theory of reasonableness or a

bitrariness, for Congress to expel known alien Communists * * *." Pp. 535-536. *Harisiades v. Shaughnessy*, 342 U.S. 580, held that the provision of the Alien Registration Act of 1940 authorizing deportation of aliens because of membership in the Communist Party was constitutional, even as applied to aliens whose membership had ended before passage of the Act. In an opinion by Mr. Justice Jackson, the Court held that due process was not denied, partly because "Congress received evidence that the Communist movement here has been heavily laden with aliens and that Soviet control of the American Communist Party has been largely through alien Communists." P. 590. In *Galvan v. Press*, 347 U.S. 522, the Court held that the provision of the Internal Security Act of 1950 for the deportation of any alien who has been a member of the Communist Party after entry was constitutional even as applied to an alien who had no knowledge that the Party advocated overthrow of the government. In *Flemming v. Nestor*, 363 U.S. 603, the Court upheld a provision of the Social Security Act terminating old-age benefits for aliens deported for membership in the Communist Party. *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, sustained the constitutionality of the registration provisions of the Internal Security Act of 1950 concerning "Communist action organizations" against attack under the First Amendment and other provisions of the Constitution; the Court's holding was specifically based on congressional investigations like that involved here, and on the findings concerning the Communist Party which resulted from such investiga-

tions. Pp. 96-97, 102. And in *Scales v. United States*, 367 U.S. 203, 228-230, the Court upheld the membership clause of the Smith Act.¹⁷

Recent decisions invalidating some provisions of congressional legislation dealing with subversive activities leave undisturbed the fundamental premise that Congress has power to regulate such activities by appropriate means. In *Aptheker v. Secretary of State*, 378 U.S. 500, the Court invalidated the passport provision of the Subversive Activities Control Act of 1950 (Section 6, 50 U.S.C. 785), on the ground that it too broadly and indiscriminately curtailed free

¹⁷ This Court has also upheld State power in relation to Communist activities. In *Gerende v. Board of Supervisors*, 341 U.S. 58, the Court held unanimously that Maryland could require every candidate on the ballot to swear in an affidavit that he was not engaged in any attempt to overthrow the government by force and violence. In *Garner v. Board of Public Works*, 341 U.S. 716, the Court held that a city has power to require its employees to execute affidavits disclosing whether they were or had ever been members of the Communist Party. *Adler v. Board of Education*, 342 U.S. 485, similarly determined that a New York statute which makes any member of an organization advocating the overthrow of the government by force or violence ineligible for employment in the public schools was constitutional. In *Beilan v. Board of Public Education*, 357 U.S. 399, and *Lerner v. Casey*, 357 U.S. 468, the Court found that State officials could question employees about their Communist affiliations and discharge them if they refused to answer. And in *Konigsberg v. State Bar*, 366 U.S. 36, and *In re Anastaplo*, 366 U.S. 82, this Court held that a State could constitutionally deny admission to the Bar to applicants who refused to answer questions pertaining to membership in the Communist Party. Mr. Justice Harlan said that "[t]he Court has long since recognized the legitimacy of a statutory finding that membership in the Communist Party is not unrelated to the danger of use for such illegal ends of power given for limited purposes." 366 U.S., p. 52.

dom to travel, but the Court left no doubt of Congress' power—which it termed “obvious and unarguable” (p. 509)—to “safeguard our Nation's security” (*ibid.*) by more carefully tailored legislation (see pp. 512-513). In *United States v. Brown*, 381 U.S. 437 (which, as noted earlier (p. 31, n. 16, *supra*), invalidated a provision of the Labor Management Reporting and Disclosure Act forbidding members of the Communist Party to hold union office), this Court did not question the constitutional power of Congress to regulate Communist or subversive activities; it held only that in doing so Congress could not, without violating the constitutional proscription against bills of attainder, “specify the people upon whom the sanction it prescribes is to be levied,” but “must accomplish such results by rules of general applicability.” P. 461. And in *Albertson v. Subversive Activities Control Board*, 382 U.S. 70, the Court, again without disturbing either the principle of congressional power to regulate subversive activities or its earlier decision in *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (see p. 33, *supra*), held merely that a member of the Party could not, consistently with his Fifth Amendment right against compulsory self-incrimination, be compelled to register with the Attorney General.

Thus, the unbroken course of the relevant decisions of this Court sustains the power of Congress to enact appropriate legislation controlling Communist activities. That Communist infiltration of labor unions—the subject of inquiry by Congress in this case—is a proper subject of such legislation is also, we think,

established. Congress has long had evidence of the dangers posed and the disruptive tactics employed by Communists in seeking to gain control of labor unions with a view to using the resulting power for conspiratorial ends. The Court summarized the evidence available in 1947 in *American Communications Association v. Douds*, 339 U.S. 382, 388-389:

Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. • • •

No useful purpose would be served by setting out at length the evidence before Congress relating to the problem of political strikes, nor can we attempt to assess the validity of each item of evidence. It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action.

And see, also p. 53, *infra*.

2. *An Investigation of Communist Infiltration of Labor Unions
Is, Therefore, Within Congress' Power*

Since Congress has undoubted power to investigate in areas where appropriate legislation would be constitutionally permissible, the investigation that gave rise to the citation of petitioner for contempt could be considered beyond the power of Congress only if no legislation upon the subject of Communist activities in the labor movement could be devised that Congress had power to enact. That is surely an untenable proposition.¹² The congressional legislation and judicial opinions reviewed in the preceding section demonstrate that there was a reasonable foundation for believing in 1955 that the activities the House Committee on Un-American Activities was investigating might be found disruptive of labor conditions and warrant appropriate legislative correction, and there is no occasion to reconsider here the correctness of the conclusions reached by Congress upon the evidence available. The power of Congress to investigate cannot depend upon its ability to prove in advance the answer to the very question to be investigated. It is surely enough that Congress in 1955 had cause to believe that there might be a condition calling for appropriate legislation—for the very purpose of the investigation is to ascertain whether the condition

¹² Particular provisions of such legislation may, of course, run afoul of specific constitutional prohibitions. See p. 85, and n. 16, p. 31, *supra*. Our point is that there is no basis to suppose that no such legislation could be devised that would be appropriate and permissible, as might be the case, for example, with legislation regulating religious beliefs.

in fact exists. Again we emphasize that if Congress can legislate concerning Communist activities generally, and in the labor field in particular, *a fortiori* it can conduct investigations upon which to base such legislation.

D. THE PURPOSE OF THE QUESTIONING OF PETITIONER WAS TO ELICIT INFORMATION RELEVANT TO A VALID SUBJECT OF LEGISLATION—RATHER THAN TO EXPOSE HIM FOR THE SAKE OF EXPOSURE ALONE

The discussion just concluded advances the general proposition that the investigation of Communist activities—specifically the kind of investigation at issue here, conducted by the Committee on Un-American Activities in the labor field in 1955—is within the scope of the legislative powers granted Congress by the Constitution. We grant, however, that a particular congressional hearing or course of questioning might conceivably lack a valid legislative purpose, being designed not to elicit relevant information but to expose or punish individual witnesses—and that, in that event, a citation for contempt based on a witness's refusal to answer questions put to him by the investigating committee would be invalid. In *Kilbourn v. Thompson*, 103 U.S. 168, 195, as we saw, this Court held the use of compulsory process to elicit testimony in a congressional investigation and the subsequent citation for contempt invalid because the investigation was judicial in nature and “could result in no valid legislation on the subject to which the inquiry referred,” and in *Watkins v. United States*, 354 U.S. 178, 200, the Court said:

We have no doubt that there is no congressional power to expose for the sake of exposure

The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

This injunction has been repeated in later cases. *E.g., Hutcheson v. United States*, 369 U.S. 599, 614. We accept it. It was not, however, violated in the present case.

1. The subject Congress was investigating—Communist infiltration of labor unions—not only is within the area of possible legislation (see pp. 29–36, *supra*); it has also been the subject of several enactments; and this, we think, demonstrates Congress' *bona fide* legislative concern. In 1947, the Labor Management Relations Act inserted Section 9(h) into the National Labor Relations Act, closing the facilities of the National Labor Relations Board to unions whose officers had not filed non-Communist affidavits. See *American Communications Association v. Douds*, 339 U.S. 382. After twelve years of experience, Congress deleted this provision and, in Section 504 of the Labor Management Reporting and Disclosure Act, made it a crime for a member of the Communist Party to hold union office. 73 Stat. 536, 29 U.S.C. 504. In addition, the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, deals extensively with unions found to be Communist fronts or Communist-infiltrated. Act of September 23, 1950, 64 Stat. 987, 998, as amended by Act of August 24, 1954, § 10, 68 Stat. 778, 50 U.S.C. 792a. It is patent, therefore, that Congress has been concerned with

legislating in this field, and not merely exposing witnesses.

At the time of the issuance of the subpoena to petitioner, the House Un-American Activities Committee had reason to believe that petitioner would have valuable and pertinent information concerning Communist infiltration of labor organizations. The Committee had been informed that petitioner was a general vice-president of the United Electrical, Radio, and Machine Workers of America, and president of District No. 9 of the union; it had received sworn testimony in 1951 from a long-time district president of the union that almost all of its important officials were Communist Party members; and a former Communist Party member, who had been an organizer for the U.E., had testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party. (See Statement, *supra*, pp. 4-5.) That eliciting from petitioner pertinent information concerning Communist activities in labor unions was the true object of the Committee's questioning of petitioner is manifest from the opening statement of the Chairman, from the course of the questioning of petitioner and prior witnesses, and from the explanations made to petitioner during the hearings. (See Statement, *supra*, pp. 7-14, and pp. 59-64, *infra*.¹⁰)

¹⁰ We consider the circumstances of petitioner's questioning at greater length, *infra*, pp. 59-64, in discussing petitioner's claim that the questioning infringed his First Amendment rights of belief and association. We are concerned here only with the issue whether petitioner established that such questioning lacked any *bona fide* legislative purpose.

In these circumstances—a congressional inquiry into a subject of demonstrated legislative concern and the witness in a position to give highly relevant information—one could conclude that the Committee was abusing its powers only by challenging the motives of its members. This Court has consistently refused to embark upon such an inquiry. It is “not our function,” the Chief Justice said in *Watkins*, to engage “in testing the motives of committee members. * * * Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly’s legislative purpose is being served.” 354 U.S., p. 200. Accord, *Barenblatt v. United States*, 360 U.S. 109, 132; *Wilkinson v. United States*, 365 U.S. 399, 412. This rule is not new or confined to congressional investigations. As long ago as *McCray v. United States*, 195 U.S. 27, 55, it was held that there is no authority in the judiciary to restrain a lawful exercise of power by another department of the government because a wrong motive or purpose has impelled the exercise of the power. See, also, *Arizona v. California*, 283 U.S. 423, 455. Accordingly, we submit, once a valid legislative purpose for the particular inquiry is shown—as was done here—any further consideration of the legislators’ motives or intentions is improper. But, at all events (as now we show), the record of these proceedings refutes any claim that there were improper motives—“union busting” and the like—in this case.”

* Insofar as petitioner’s claim of improper legislative purpose is based on statements of the Chairman of the Committee and its employees, what petitioner alleges to be the Committee’s

2. On February 9, 1955, the Committee announced that hearings would be held in Fort Wayne, Indiana.²⁰ At that time, neither the Chairman of the Committee, nor the members of the subcommittee, nor Committee counsel had any knowledge that an N.L.R.B. election was scheduled to be held at the Magnavox plant in Fort Wayne on February 24, 1955 (R. 94, 116, 123-124). Nevertheless, petitioner sent the Chairman a highly abusive telegram (R. 125-127) (which he received on February 10, 1955) stating that, in view of the scheduled election and in view of what was described in the telegram as the criminal conviction of former Committee Chairman Thomas for "bribery," petitioner had every right to ask whether the Committee had been bribed by management to help it in "union busting." On February 14, 1955, George Goldstein, Washington representative of the U.E., sought a continuance of the hearing until after the union election at Magnavox, and was granted an interview with the Committee. Petitioner suggests (Br. 63-64) that the discussion which developed dur-

methods of operation, and that the Committee's investigations generally are conducted for the purpose of exposure, not legislation, this Court has twice rejected, in *Barenblatt, supra*, and in *Watkins, supra*, such a claim based on identical evidence. Compare R. 195-254 with the Record, pp. 77, 262, 265-266 and petitioner's brief in *Barenblatt*, No. 35, Oct. Term, 1958, and the Record, pp. 11-16, 58-64 and 93-168 and petitioner's brief in *Watkins*, No. 261, Oct. Term, 1956.

²¹ The Committee counsel testified that no newspaper release was prepared by the Committee (R. 94). Similarly, there is no basis in the record for petitioner's claim (Br. 63) that the Committee Chairman notified local newspapers of Committee actions.

ing the interview shows that the Committee was not acting in furtherance of a genuine legislative purpose. We disagree. The material portions of the interview are as follows (R. 116):

Chairman WALTER. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.

Chairman WALTER. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Commenting on this colloquy, the court below on the first appeal stated (280 F. 2d at 683):

[I]t can be gleaned that Mr. Walter showed some displeasure which, under the circumstances, and having in mind the abusive and insulting telegram * * * can be understood and as readily be excused. Congressmen are more fortunate than judges in at least this respect, that when attacked unjustly, they are at liberty

to defend themselves and to express themselves forcefully and vigorously."²²

While a continuance of the scheduled hearing was at first denied (R. 15), it was later granted and the hearing was set for February 28 (R. 15-16). The hearing opened on that day with an announcement by the Chairman of the subcommittee that the subject of the inquiry was "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda" (Statement, *supra*, p. 8). The questions asked petitioner showed clearly that the Committee was conducting an investigation of Communist infiltration in the labor field. No member of the Committee, or its counsel, indicated that the Committee was engaged in "union busting" or was attempting merely to expose petitioner. On the contrary, they repeatedly stated that the subcommittee was seeking information on Communist activities. Congressman Doyle stated four times that the purpose of the hearings was to obtain information on Communist infiltration and control of labor unions (Statement, *supra*, pp. 9-14, and n. 42, p. 70, *infra*).²³

²² Petitioner points: (Br. 8, 64) to testimony of a newspaper reporter who wrote a story to the effect that at the meeting of February 14, 1955, the "House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union" (R. 407). The reporter admitted, however, the accuracy of the stenographically reported conference between Mr. Walter and Mr. Goldstein on February 14, although he thought something more was said by Mr. Walter or another representative of the Committee (R. 119, 123).

²³ For similar statements to the other witnesses called, see R.

To rebut such evidence that the Committee was pursuing a valid legislative purpose, petitioner relies almost entirely on newspaper stories (Br. 62-65). But in *Watkins* and *Barenblatt, supra*, this Court held that a defendant may not challenge the motives of Committee members on the basis of their official statements on the floor of Congress, at committee hearings, and in committee reports; *a fortiori*, he cannot do so on the basis of unofficial statements made to the press. At all events, the newspaper stories are unpersuasive bits-and-pieces that cannot outweigh the proof of valid legislative purpose contained in the transcript of the hearing itself.

3. It is true that "exposure" of petitioner, as well as other individuals, resulted to some extent from the hearings. But such exposure is an inevitable by-product of virtually any congressional investigation into secret activities. Cf. *Uphaus v. Wyman*, 360 U.S. 72, 71; *DeGregory v. New Hampshire*, No. 396, this Term, decided April 4, 1966. If exposure resulting from such an investigation is automatically to be 231-232, 225, 232. For example, Congressman Doyle stated to a prior witness, Lawrence Cover, (R. 232):

Mr. DOYLE. May I state this, that so far as I know, we in the committee have had no notice and no knowledge of any oncoming elections back in your area at the time the meeting was set. I was present, happened to be, when the date was set for the hearing to have occurred recently, but this hearing before your union or down in your area was a matter that we had planned last year, many months ago. Because of workloads we didn't get to it. So at the first meeting of our group a couple of weeks ago we included the trip to your area as one of the places where we should promptly go to clean up what was hanging over from last year.

deemed exposure "for the sake of exposure" and thus proof that the investigation did not have a valid legislative purpose, no such investigations would be permissible. Yet, exposure of problem areas is one of the preliminary steps to remedial legislation, and, obviously, the identity and activities of particular individuals may be a vital part of the problem. As the Court of Appeals for the District of Columbia Circuit noted in *Barsky v. United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843:

If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. * * *

"Accord, *Morford v. United States*, 176 F. 2d 54, 57 (C.A.D.C.), reversed on other grounds, 339 U.S. 258. See also, *McPhaul v. United States*, 364 U.S. 372; *United States v. Bryan*, 339 U.S. 323; *United States v. Fleischman*, 339 U.S. 349. In *McPhaul*, this Court observed with regard to the pertinency of records subpoenaed from the "Civil Rights Congress" (p. 381):

It would seem clear enough that the auspices under which the Civil Rights Congress was organized, the identity and extent of its affiliations, the source of its funds and to whom distributed would be prime considerations in determining whether the organization was being used by the Communists in the Detroit area. If the Civil Rights Congress was affiliated with known Communist organizations, or if its funds were received from such organizations or were used to support Communist activities in the Detroit area, those facts, it is reasonable to suppose, would be shown by the records called

Similarly it was of obvious importance to this investigation of Communist activities in labor unions, and particularly the U.E., to determine what officers of the union were Communist Party members. Such information would show the extent to which the unions were Communist-controlled and therefore the need, or lack of need, for legislation.

On the basis of the evidence introduced at petitioner's trial showing the Committee's sustained legislative purpose, the district court found (R. 206-207)

that the purpose of the Subcommittee (as stated at the inception of the hearings and again stated on many occasions during the hearings and further indicated by the disclaimers of any other purpose) was not exposure of the defendant, but the ascertainment of the extent of Communist Party infiltration into labor. * * *

After reviewing the same evidence, the court of appeals on the first appeal stated that "[t]he record clearly demonstrates that the Committee hearing was one constituting a continued investigation which the Committee was conducting into Communist activities in the labor field, including infiltration into labor organizations and Communist propaganda" (280 F. 2d, p. 681). Upon a thorough review of the record (see pp. 681-685), the court concluded (p. 685):

Exposure no doubt resulted from the inquiry. But no one can fairly read the record without perceiving that the dominant purpose of the

for by the subpoena, and those facts would be highly pertinent to the Subcommittee's inquiry [into Communist activity in the Detroit area].

Committee was a legislative one, namely, to learn the extent of Communist infiltration or domination of labor unions. * * *

We submit that these holdings are fully supported by the evidence.

C. REQUIRING PETITIONER TO TESTIFY DID NOT CONSTITUTE A BILL OF ATTAINDER NOR IS THE COMMITTEE'S AUTHORIZING RESOLUTION UNCONSTITUTIONALLY VAGUE

We turn now to two contentions made by petitioner that stem directly from his argument that his questioning by the Committee on Un-American Activities was devoid of a valid legislative purpose and designed solely to expose him for the sake of exposure (Br. 51-69, 87-91, 96-118).²² The premise of both contentions is that exposure for exposure's sake was, in fact, the dominant purpose of the inquiry. Since (as we have just shown) this premise is false, the contentions fail.

1. A bill of attainder is a statute which, instead of regulating in general terms, applies a sanction or deprivation to named or specified persons, thereby invading the province of the judiciary; such laws are expressly forbidden by Article I, Section 9 of the Constitution. *Cummings v. Missouri*, 4 Wall. 277, 323; *United States v. Lovett*, 328 U.S. 303, 315-317; *United States v. Brown*, 381 U.S. 437. However, we know of no case in which the public presentation of facts concerning an individual—exposure—has been regarded as an attainder. And, even assuming that a deliberate congressional attempt to expose an individ-

²² We deal with these contentions briefly since, as presented by petitioner, they are substantially interchangeable with the "exposure for exposure's sake" argument dealt with above.

nal for the sake of exposure unrelated to a *bona fide* legislative purpose could amount to a bill of attainder, petitioner apparently does not contend that a congressional hearing would violate the prohibition against such laws in circumstances where exposure was merely the byproduct of a *bona fide* investigation into a subject which the Legislature was empowered to consider. Yet such, we have seen (pp. 38-48, *supra*), were precisely the circumstances here.

2. Petitioner's contention that the authorizing resolution of the Un-American Activities Committee (Rule XI of the Rules of the House of Representatives, p. 90, n. 58, *infra*) is unconstitutionally vague is similarly without merit.²⁴ Rule XI authorizes the Committee to make investigations of "un-American propaganda activities" and "subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution." Petitioner's complaint is that this mandate is so vague and broad that it permits the Committee to make investigations whose sole objects are exposing for exposure's sake, "union busting," deterring the exercise of freedom of speech and of association, and other purposes not genuinely legislative. Not only is the premise of this argument—that the Committee's investigations lack a valid legislative purpose—false; in addition, the argument rests

²⁴The identical contention was expressly rejected in *Barenblatt*, 360 U.S., pp. 116-117. See, also, *Wilkinson*, 365 U.S., pp. 407-408.

upon a misreading of the applicable decisions of this Court.

It is true, of course, that the "standards of permissible statutory vagueness are strict in the area of free expression." *N.A.A.C.P. v. Button*, 371 U.S. 415, 432; see, e.g., *Smith v. California*, 361 U.S. 147, 151. And it follows that a penal or prohibitory statute or decree so broad or indefinite that it might deter the exercise of constitutionally protected rights of expression is invalid. *N.A.A.C.P. v. Button*, 371 U.S. pp. 432-433, and cases cited. But there is no such danger here, even granting that Rule XI may be rather vague and general in its terms (see *Watkins v. United States*, 354 U.S. 178, 202). The statute prohibits nothing; it is merely an authorizing resolution. Since it lacks any prohibitory effect or penal sanction, we do not see how the generality of its language could prejudice or deter anyone. No person can be compelled to testify or cited for contempt of Congress and convicted under 2 U.S.C. 192 for refusal to testify unless he willfully refuses to answer questions that are pertinent to a subject under inquiry by, and within the legislative competence of, Congress; that was the case here (see pp. 29-41, *supra*, and pp. 59-64, *infra*).

In addition, it is apparent that petitioner's complaint goes not to the wording of Rule XI, but to the scope of the Committee's investigations and its alleged improper extra-legislative purposes of exposure and condemnation. Since the Committee's investigations—and specifically that at which petitioner was questioned—in fact do have a valid legislative

purpose, under petitioner's own reasoning any argument based on vagueness (or on the Bill of Attainder Clause) is foreclosed.

To complete this part of our argument, it remains only to consider whether the investigation constituted an invasion of petitioner's First Amendment rights—a question to which we now turn.

D. COMPELLING DISCLOSURE OF COMMUNIST PARTY ACTIVITIES IN THE CIRCUMSTANCES OF THIS CASE DOES NOT INVADE THE FREEDOMS OF BELIEF AND ASSOCIATION SAFEGUARDED BY THE FIRST AMENDMENT

In exercising its broad powers of investigation Congress, of course, is subject to the restrictions imposed by the Bill of Rights upon all federal governmental activity. The Fifth Amendment privilege against self-incrimination has been frequently invoked and recognized. *E.g., Quinn v. United States*, 349 U.S. 155. In addition, "an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. * * * The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." *Watkins v. United States*, 354 U.S. 178, 197. But here, as in *Barenblatt v. United States*, 360 U.S. 109; *Uphaus v. Wyman*, 360 U.S. 72; *Wilkinson v. United States*, 365 U.S. 399; and *Braden v. United States*, 365 U.S. 431, the Committee violated no rights guaranteed by the First Amendment.

Initially, we note that petitioner is not complaining of a "law" but of compulsion to answer questions. Nor is he complaining that Congress has directly abridged his right to speak or punished him for its

exercise, since, had he answered the Committee's questions, he would have remained as free as ever from any form of legal restriction upon political activities or other forms of expression. His complaint, rather, is that the disclosure of views and activities that are unorthodox or unpopular may subject him (and others whom he names) to public obloquy, thus discouraging them and others from adhering to unpopular views lest they suffer such a fate in the future. Obviously, it requires something more than a literal reading of the First Amendment to hold that such collateral consequences raise a constitutional question. Moreover, whatever may be the merits of a "balancing test" when dealing with a law that itself directly abridges freedom of speech or the press, questions of judgment and degree surely must be faced in dealing with governmental activity that affects freedom of expression only indirectly. As the Chief Justice said in *Watkins* (p. 198):

It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. * * * The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from any unwilling witness.

And in *Barenblatt v. United States*, 360 U.S. 109, 126-127, the Court held:

Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public in-

interests at stake in the particular circumstances shown.

Applying this standard to the present case, we think it is clear that petitioner's First Amendment rights were not invaded.

1. The public interest to be served by petitioner's testimony was the need for information concerning subversive activities in a vital area in our national life—labor relations—information that would be helpful not only in reviewing the effectiveness of existing legislation but also in determining what new legislation might be needed to meet existing or threatened evils. The hearing at which petitioner was questioned was conducted for the explicit purpose of securing information about "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda" (R. 219). These are plainly matters of serious national concern; the reality of these dangers and the disruptive effects of Communist influence in labor unions are shown by industrial history. We have already adverted to the mass of material available in 1947 showing Communist infiltration of labor organizations not to support and further trade union objectives but to make them a device for disrupting commerce and industry whenever the dictates of political policy might so require (see p. 36, *supra*). For example, in 1949 and 1950, the Congress of Industrial Organizations found it necessary to expel eleven international unions, including petitioner's, because of

Communist domination."²¹ The labor movement's alertness to its responsibilities suggests that such problems can often be better solved without legal intervention, but the possibility of a legislator's reaching that conclusion falls far short of demonstrating that the evil does not merit legislative consideration.²²

The special problems posed by Communist activity in the labor movement make the public interest in this investigation particularly strong for upholding the exercise of congressional power. And, besides the potential impact upon the labor movement, the same general public interest present in the *Barenblatt*, *Wilkinson*, and *Braden* cases—the right of self-preservation—is present here. In *Barenblatt*, the

²¹ The committee which recommended expulsion of the United Mine, Mill and Smelter Workers Union stated (*Official Report on the Expulsion of Communist Dominated Organizations from the CIO*, compiled by the Publicity Department, CIO, Sept. 1954), p. 13):

The Communist Party is precisely this type of organization which the CIO is under a constitutional mandate to oppose—one which would use power to exploit the people for the benefit of an alien loyalty. The Communist Party speaks in the words of unionism and Americanism. But actually it matters not to the Communist Party whether a particular policy will advance or hinder the best interests of American labor. The sole test is whether the policy is required by the need of the Soviet Union. Only to the extent that the Soviet line permits will the propaganda mill of the Communist Party grind out platforms which are in consonance with the ideals of American labor. In event of conflict, however, between the needs of the Soviet Union and the best interests of American labor, the former must always prevail.

²² We have already pointed out that Congress chose to enact legislation in 1947, 1954, and 1959 aimed at reducing Communist influence in labor unions. See p. 39, *supra*.

Court sustained against attack under the First Amendment the interrogation of a witness concerning Communist activities in the field of education, saying (360 U.S., pp. 127-128):

That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court. * * * In the last analysis this power rests on the right of self-preservation, "the ultimate value of any society," *Dennis v. United States*, 341 U.S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

The weight to be assigned this public interest in acquiring knowledge of the workings of the Communist movement was emphasized in *Uphaus v. Wyman*, 360 U.S. 72, a case involving a witness before the Attorney General of New Hampshire, who was conducting an investigation on behalf of the State legislature. The witness was executive director of World Fellowship, an organization which ran a summer camp in New Hampshire. The witness refused to provide a list of guests of the camp, and was convicted of contempt. In upholding the conviction, the Court stated that the interest of the State was in the presence of subversives in New Hampshire; that the Attorney General "had valid reason

to believe" that there was a "nexus between World Fellowship and subversive activities" and that the speakers and guests might be subversive persons; and that this nexus was adequate to justify the investigation since the investigation was undertaken "in the interest of self-preservation" (pp. 79-80). In contrast to the strong governmental interest, the Court found that the competing interest in associational privacy was "tenuous at best," since the camp was public and was required to maintain a register open to police officers, and since the only harm—public exposure—was "an inescapable incident of an investigation into the presence of subversive persons within a State" (pp. 80-81)."

Subsequently, in *Wilkinson v. United States*, 365 U.S. 399, and *Braden v. United States*, 365 U.S. 431, the Court sustained like questions in the course of a

"In *DeGregory v. New Hampshire*, No. 396, this Term, decided April 4, 1966, this Court recently upheld the claim of a witness that his refusal to answer certain questions put to him by the Attorney General of New Hampshire in another investigation of subversive activities was protected by the First and Fourteenth Amendments. Distinguishing *Uphaus*, the Court found that the questions asked DeGregory lacked sufficient connection with the State's interest in preventing subversion, in view of the fact that they related to activities six years and more before the investigation and that there was no indication that DeGregory was currently involved with any subversive organizations or activities. In *Uphaus*—as in the present case—the questions asked related to current subversive activities; and there can be no doubt, we submit, of the propriety of such questioning. Indeed, this Court affirmed an earlier conviction of DeGregory based upon his refusal to answer the question whether he was presently a member of the Communist Party. *DeGregory v. Attorney General*, 368 U.S. 19.

congressional inquiry into Communist propaganda, rejecting the witnesses' contentions under the First Amendment.* See, also, *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 549; p. 21, *supra*.²¹

*The Court said in *Braden* (p. 435):

But *Barenblatt* did not confine congressional committee investigation to overt criminal activity, nor did that case determine that Congress can only investigate the Communist Party itself. Rather, the decision upheld an investigation of Communist activity in education. Education, too, is legitimate and protected activity. Communist infiltration and propaganda in a given area of the country . . . are surely as much within [the subcommittee's] pervasive authority as Communist activity in educational institutions. . . . Information as to the extent to which the Communist Party was utilizing legitimate organizations and causes in its propaganda efforts in [the South] was surely not constitutionally beyond the reach of the subcommittee's inquiry. Upon the reasoning and authority of *Barenblatt*, 360 U.S. at 125-134, we hold that the judgment is not to be set aside on First Amendment grounds.

²¹The lower courts have likewise uniformly and repeatedly held that the First Amendment does not prohibit Congress from investigating Communist activities in search of information necessary in order to legislate. *E.g.*, *Barsky v. United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843; *Lawson v. United States*, 176 F. 2d 49, 52-53 (C.A. D.C.), certiorari denied, 339 U.S. 984; *United States v. Josephson*, 165 F. 2d 82, 90-92 (C.A. 2), certiorari denied, 338 U.S. 838; *Eisler v. United States*, 170 F. 2d 273 (C.A. D.C.), certiorari dismissed, 338 U.S. 883; *United States v. Orman*, 207 F. 2d 148, 157 (C.A. 3); *Marshall v. United States*, 176 F. 2d 473 (C.A. D.C.), certiorari denied, 339 U.S. 933; *Dennis v. United States*, 171 F. 2d 986 (C.A. D.C.), affirmed on other grounds, 339 U.S. 162; *Sacher v. United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576; *Townsend v. United States*, 95 F. 2d 352, 361 (C.A. D.C.), certiorari denied, 303 U.S. 664; *United States v. Lattimore*, 215 F. 2d 847, 851 (C.A. D.C.); *Morford v. United States*, 176 F. 2d 54, 57 (C.A. D.C.), reversed on other grounds, 339 U.S. 258;

The public interest in congressional knowledge of Communist activities is underscored by the numerous decisions of this Court based upon the premise that the dangers of Communist subversion in the particular areas involved, as found by Congress, furnished an adequate constitutional foundation for substantive legislation.³³ Upon the same premise the Court has upheld, against attack under the Fourteenth Amendment, State legislation aimed at membership in the Communist Party, requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating the overthrow of the government by force and violence.³⁴ The proposition that there is sufficient public danger in the activities of the Communist Party to justify legislative investigation and appropriate legislation is thus deeply embedded in our constitutional law. To hold that the First Amendment prevents mere congressional inquiry into Communist membership or activities would not only overrule *Barenblatt*, *Uphaus*, *Braden*, and *Will-*

United States v. Kamin, 136 F. Supp. 701, 803 (D. Mass.); *United States v. Bryan*, 72 F. Supp. 58, 62 (D. D.C.), reversed on other grounds, 174 F. 2d 525 (C.A. D.C.), reversed, 359 U.S. 323.

³³ *American Communications Association v. Douds*, 339 U.S. 382; *Osman v. Douds*, 339 U.S. 846; *Carlson v. Landon*, 341 U.S. 524; *Harisiades v. Shaughnessy*, 342 U.S. 580; *Galeon v. Press*, 347 U.S. 522; *Flemming v. Nestor*, 363 U.S. 603; *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1; *Scales v. United States*, 367 U.S. 203.

³⁴ *Gerende v. Board of Supervisors*, 341 U.S. 56; *Garner v. Board of Public Works*, 341 U.S. 716. See, also, *Beilan v. Board of Education*, 357 U.S. 399; *Lerner v. Casey*, 357 U.S. 468; *Adler v. Board of Education*, 342 U.S. 485; *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 549.

inson but reject a basic premise of the consistent line of decisions beginning with *American Communications Association v. Douds*, *supra*.

2. We recognize, however, that each case must rest in a measure upon its own facts. Hence, we do not suggest that, simply because there is a sufficient interest in legislative knowledge concerning Communist activities in a particular field to justify an appropriate use of compulsory process to elicit testimony, it automatically follows that particular questioning of a particular witness is proper. Accordingly, we consider the reasons for calling petitioner in this case, the relevancy of the information he could be expected to furnish, and the potential harm to protected freedoms; and we show that in all these respects the present case is substantially stronger than *Barenblatt*, *Wilkinson*, or *Braden*.

We may begin by noting that not only was the Committee's inquiry in this case supported by strong considerations of public interest, as we have seen, but, in addition, there was every reason to believe that petitioner could furnish pertinent and valuable information. Petitioner was not subpoenaed as a result of "indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee." *Barenblatt v. United States*, *supra*, 360 U.S., p. 134. At the time petitioner was subpoenaed, the Committee had information that the United Electrical, Radio and Machine Workers of America had been infiltrated by the Communist Party. Indeed, the Committee had heard sworn testimony that virtually all the union's

officers were Communist (see *supra*, p. 4). Petitioner was admittedly general vice-president of the union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization (see *supra*, pp. 12-14). As an officer of a union about which the Committee had evidence of such infiltration, petitioner was in a position to provide pertinent information, either by affirming or repudiating previous testimony. And the questions that the Committee asked and that petitioner refused to answer were fairly designed to elicit such information.

An affirmative answer to the question that formed the basis of count one of the indictment—whether petitioner was a member of the Communist Party at the time of the hearings—would have helped to confirm the reports of Communist infiltration of the labor movement and show that petitioner could give further information; a negative response would have tended to show that the reports were exaggerated or inaccurate. In *Barenblatt*, three of the five questions that the witness refused to answer concerned his membership in the Communist Party¹⁴ and this Court specifically affirmed the conviction on the ground that these three questions were proper. P. 115. In *Williams*

¹⁴“Are you now a member of the Communist Party?”; “Have you ever been a member of the Communist Party?”; “Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?” 360 U.S. p. 115.

the sole question on which the witness was convicted (and therefore the question on which this Court affirmed) was, "Are you now a member of the Communist Party?" 365 U.S., p. 407. And in *Braden*, of the six questions on which petitioner was convicted, the question on which this Court affirmed was, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" 365 U.S., p. 433, n. 2. The question involved in count one here—"Are you now a member of the Communist Party?"—is identical to the question in *Wilkinson* and virtually identical to those in *Barenblatt* and *Braden* and is in itself sufficient to sustain the conviction."

It may be argued that there was no governmental interest in questioning petitioner because the Committee already had detailed information concerning him. Although there are other answers to this argument (see pp. 63-64, *infra*), we submit that the power of a congressional committee to ask material questions in the course of an inquiry into a proper subject of legislative investigation cannot be made to depend upon a judicial determination of how helpful this Court would consider the information. The pertinency of the questions to a duly authorized subject of investigation must be clearly established. The objective must be legislation, not prosecution, adjudication, or exposure (see *supra*, pp. 38-48). We also assume *arguendo* that there must be reason to believe

"Since petitioner was given a general sentence and fine on all counts less than the maximum permissible punishment on any one, his conviction must be upheld if any count is sustained. *Barenblatt*, p. 115.

that the witness has pertinent information. Finally, the public importance of Congress' acquiring pertinent information upon the subject under investigation must be weighed against any potential damage to liberties protected by the Bill of Rights. But once these points are covered, the judicial function is exhausted. The Court would be exercising a legislative function if it undertook to decide just how necessary—or how helpful—particular information would be. Choosing among relevant lines of inquiry, deciding when the ground has been adequately covered, relying upon testimony already received, or seeking further disproof or corroboration are all parts of the process of legislative investigation. For the Court to decide such issues would be inconsistent with the presumption of validity due to a coordinate branch of the government and violative of principles of separation of powers. See *Watkins v. United States*, 354 U.S. 178, 215.

This precept is as necessary in practice as it is sound in principle. No one can tell how helpful a logically material item of evidence may be in the legislative process without studying and drawing inferences from the evidence already introduced, ascertaining and appraising the other sources of information, weighing the kinds of legislation that might be drafted, and anticipating the probable response of the Senate and the House to particular evidence. A printed record supplies no basis for undertaking such a task; it can be performed only by lawmakers as part of the process of legislation.

In the present case, moreover, it is clear that the information sought to be elicited from petitioner

would have been extremely helpful to Congress. Even if the Committee had expected to receive only corroborating testimony from petitioner, there is an important governmental interest in having a well-informed witness confirm previous testimony—particularly when the existing evidence is in a controversial area and is therefore likely to be challenged. If the attempts of the Communist Party to infiltrate labor organizations were few or unsuccessful, a legislator might well conclude that the dangers did not justify the costs of legislation. If the infiltration was on a larger scale and more successful, he might reach the opposite conclusion.

Furthermore, the Committee was not only seeking evidence concerning petitioner. The question whether he was a member of the Communist Party had a direct bearing on the question of Communist infiltration of his union. That question (and the questions in counts 2 and 3 concerning petitioner's activities and relations with local officers of the Communist Party) could have provided information as to the extent of such infiltration and the methods and means employed, as well as information concerning Communist activity in the labor movement generally. The question in count four concerning the possible Party membership of another official of the union clearly fell within the same category and sought the same type of information. The questions in counts five and six concerning petitioner's possible participation in the activities of a known Communist-front organization, and the method by which his activity was solicited, had an obvious bearing upon the Committee's interest in

the dissemination of Communist propaganda. In short, the Committee had reasonable grounds to believe that petitioner could provide highly useful information on the subject of their inquiry."

3. In weighing the governmental interest in obtaining information from petitioner against the competing interests that he asserts, it is relevant that petitioner is asserting a right, not to express his beliefs and engage in open political activities, but to keep them secret; and he is complaining, not of any governmental abridgment of freedom of expression and association, but of fear of the lawful reactions of those who do not share his opinions, once the truth is known. To be sure, the Consitution implicitly recognizes a fundamental right of privacy against undue governmental prying, and a measure of privacy may be essential to freedom of belief and also (in the beginning, at least) to effective political organization. See *Watkins v. United States*, 354 U.S. 178, 196-198. But the exact nature of the constitutional right asserted must be taken into account in weighing the governmental against the private interest—an analytical process required in this type of case (see pp. 51-53, *supra*).

It is therefore relevant to note that this is not a case of governmental interference with the political processes essential to the conduct of democratic government. Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 152, n. 4. Nor can petitioner invoke the

"We repeat that petitioner's conviction must be upheld if any of the six counts is sustained, and that here, in contrast to *DeGregory v. New Hampshire* (see p. 56, n. 29, *supra*), the questions asked petitioner related to present—not past—subversive activities.

ultimate purpose of constitutional protection of speech "to foster peaceful interchange of all manner of thoughts, information and ideas." See *Kuns v. New York*, 340 U.S. 290, 295, 302 (dissenting opinion of Mr. Justice Jackson). The guarantee of freedom of expression rests ultimately upon belief in the value of free competition in ideas when openly and publicly debated. In *Whitney v. California*, 274 U.S. 357, 372, 375, 377, Justices Brandeis and Holmes, concurring, stated:

Those who won our independence believed * * * that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

Petitioner is unwilling to stake his beliefs upon such a test. He was not called in reprisal for anything that he had said. His fear is of public knowledge and discussion of the information the Committee sought to elicit.

Furthermore, there is much less foundation for petitioner's claim of prejudice to fundamental freedoms than in *Barenblatt*, *Wilkinson*, and *Braden*. *Barenblatt* was a college teacher by profession. The investigation was into Communist infiltration in the field of education—an area of special and sensitive concern for freedom of thought and expression (cf.

Sweezy v. New Hampshire, 354 U.S. 234, 250, 257, 260-264)—and was necessarily concerned primarily with ideas and propaganda. In *Wilkinson and Braden*, the congressional inquiry was focused on Communist activities in spreading propaganda. Wilkinson was taxed at the hearings with having been sent to Atlanta, Georgia, "for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings." 365 U.S., p. 416 (dissenting opinion of Mr. Justice Black). And Braden apparently was called at least partly as a result of public letters urging opposition to measures then pending in Congress and criticizing the Un-American Activities Committee. 365 U.S., pp. 451-454 (dissenting opinion of Mr. Justice Douglas). There is no suggestion that the subpoenaing of the present petitioner had any connection with political opposition, and, surely, infiltration of labor organizations cannot be likened to political propaganda or college education.

II. THE PROCEDURES OF THE INVESTIGATING COMMITTEE IN THIS CASE WERE REGULAR AND PROPER, AND FURNISH NO GROUND FOR REVERSING PETITIONER'S CONTUMPT CONVICTION

In this part of our argument, we consider petitioner's challenge to the procedures of the Un-American Activities Committee in this case, which he contends require that his conviction for contempt of Congress be reversed.

A. THE COMMITTEE APPROVED THE INVESTIGATION OF WHICH THE HEARINGS AT WHICH PETITIONER APPEARED WERE A PART

Rule I of the Rules of Procedure of the House Committee on Un-American Activities provides in pertinent part that "[n]o major investigation shall be initiated without approval of a majority of the Committee." Admittedly, there is no direct evidence that the Committee approved the investigation of Communist activities in the field of labor of which the hearings at which petitioner was called to testify were a part." But no other reasonable inference can be drawn from the evidence.

At the time of the hearings in 1955, the Committee was engaged—and had been since at least 1952—in a continuing investigation of Communist activities in the labor field. See Statement, *supra*, pp. 4-5; 280 F. 2d, p. 681. The Committee's annual reports—endorsed by all of its members—reported on this investigation in 1954 and 1955 (Appendices I and II, *infra*, pp. 93-107)." In 1953, moreover, the Committee had made legislative recommendations based upon the investigation which were enacted into law (Appendix I, *infra*, pp. 93-94). Hence, to hold that the investigation of Communist activities in labor was not approved by the Committee it would have to be presumed that there was no Committee approval of an

"We do not dispute that this investigation was a "major" one and that approval by a majority of the Committee was therefore required.

"We have printed as Appendices I and II to this brief excerpts from the Committee's annual reports for 1954 and 1955.

investigation continuing over a period of at least four years—an investigation on which the Committee had consistently reported and on which it had based legislative proposals. Surely, on this record, no such presumption can be indulged.

It only remains to consider whether the hearings in question were part of this approved investigation. Clearly they were. The hearings were specifically linked in the 1955 annual report to the continuing investigation of Communist activities in the labor movement (Appendix II, *infra*, p. 103). In addition, the subject matter of the hearings, the opening statement of the chairman and other statements made in the course of the hearings indicate conclusively that they were a part of that investigation. (See Statement, *supra*, pp. 7-14, and note 42, p. 70, *infra*).

B. THERE WAS A PROPER DELEGATION TO THE SUBCOMMITTEE OF AUTHORITY TO CONDUCT THE HEARINGS

Rule XI of the House of Representatives authorizes the Un-American Activities Committee to delegate authority to conduct hearings to subcommittees." Pursuant thereto, the Committee by resolution of January

"It provides in pertinent part:

The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations * * *

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. * * * [Emphasis added.]

20, 1955, authorized its Chairman "to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform." (Gx 4, R. 210.) We do not understand petitioner to challenge the propriety of such resolution. Subsequently, the full Committee authorized the particular hearings at which petitioner was subpoenaed to appear and the Chairman appointed the subcommittee that took petitioner's testimony.⁴⁴ Additional evidence that the subcommittee was authorized is provided by the fact that the full committee reported petitioner's contempt to the House (Gx 8 (unprinted)).

We think the foregoing facts provide ample basis for concluding that the subcommittee was properly authorized to question petitioner. See *United States v. Seeger*, 303 F. 2d 478, 487 (C.A. 2) (concurring opinion). We know of no case where a more particularized delegation has been required. Moreover, while the formal authorizing resolution did not spell out the precise area of inquiry which the subcommittee was to explore in questioning petitioner (nor was such specification required since the subcommittee was authorized to exercise all the powers of the parent Com-

⁴⁴ See the minutes of the Committee meeting of February 9, 1955 (GX 5, R. 213) and the minutes of the meeting of the Committee on February 28, 1955 (GX 7, R. 215). Either Congressman Scherer, who made the underlying motion, or the secretary taking the minutes inaccurately described the subcommittee to be appointed as a "Subcommittee of the Committee on Internal Security." But it is perfectly obvious that what was being appointed was a subcommittee of the House Un-American Activities Committee.

mittee), it is clear that the subcommittee knew and adhered to the precise areas of interest of the parent Committee, and can in no sense be thought to have exceeded its delegated authority in interrogating petitioner.

The Committee desired to elicit information from petitioner concerning Communist activities in the union of which he was an officer; the subcommittee carefully sought to carry out this purpose. Thus, in his opening statement, the subcommittee's chairman carefully and fully delineated the subject under inquiry by the subcommittee as Communist activities in the labor field (see Statement, *supra*, p. 8), and each witness who appeared before the subcommittee on February 28 and March 1 (the dates of petitioner's appearance) was questioned concerning the same subject.⁴¹ From these and other⁴² indications, it is evident that the subcommittee—to which the parent Committee had, as we have seen, duly delegated its investigatory authority—was carrying out the specific wishes of the parent Committee when it questioned petitioner, rather than embarking on an investigatory frolic of its own. The actions of a subcommittee are ordinarily presumed to be within the scope of authority conferred by the parent Committee (*Norris v. United States*, 257 U.S. 77, 82), and not only is that presumption un rebutted by the evidence

⁴¹ See testimony of Julia Jacobs, Lawrence Cover, and petitioner. (R. 219-380.)

⁴² For example, during the testimony of Lawrence Cover, another member of U.E., on the same day petitioner testified

here, but the evidence affirmatively establishes that the subcommittee was acting in accordance with its delegated authority.

C. PETITIONER'S CLAIM THAT HE WAS NOT APPRISED BY THE COMMITTEE OF THE PERTINENCY OF THE QUESTIONS THAT HE REFUSED TO ANSWER IS NOT PROPERLY BEFORE THIS COURT AND, IN ANY EVENT, LACKS MERIT

1. *Having Failed To Challenge the Pertinency of the Questions Before the Committee, Petitioner Cannot Now Claim That He Was Not Apprised of Their Pertinency*

Petitioner claims (Br. 121-123) that he was not adequately apprised by the subcommittee of the subject under inquiry so that he could determine whether the questions asked him were pertinent to this subject. But petitioner failed to raise this objection before the subcommittee and, under this Court's decisions, is precluded from raising it for the first time in the contempt proceeding.

(a) In *Hale v. Henkel*, 201 U.S. 43, the witness based his refusal to produce documents on the ground (among others) that it was "impossible for him to collect them within the time allowed" (p. 70). The Court indicated that it would not consider this ob-

Congressman Doyle stated (R. 233-234):

[W]e as a committee have had plenty of evidence * * * that the Communist Party in this country has had and does now have a continuous infiltration program to try to take control of the policies and functions of certain labor unions and our information is that the Communist Party has had that policy toward the union of which you are a member * * * We wouldn't be having you and the other people here to help us in this investigation if we didn't have pretty definite information about certain levels in U.E. * * *

jection because, "[h]ad the witness relied solely upon [this] ground, doubtless the court would have given him the necessary time" (*ibid.*). Similarly, *United States v. Bryan*, 339 U.S. 323, held that a witness who, having been subpoenaed to appear and produce records before a congressional committee, appears but refuses to produce the records, may not raise at his trial for the first time the issue whether a quorum of the Committee was present. The Court stated that "[t]he defect in composition of the Committee, if any, was one which could easily have been remedied. * * * For two years, now grown to four, the Committee's investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes" (339 U.S., p. 333). Moreover, it was apparent that this witness "would not have complied with the subpoenas no matter how the Committee had been constituted at the time. * * * Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands" (pp. 333-334). See, also, *United States v. Fleischman*, 339 U.S. 348, 352.

These principles are fully applicable to the issue whether the witness is sufficiently apprised of the subject under inquiry and the pertinency of the questions to this subject. When a witness challenges the pertinency of a question, the congressional committee or its counsel can explain more fully the subject under inquiry and the relationship between the question and the subject, and, if necessary, can modify

the question or the precise subject under inquiry. Moreover, when a witness relies on other grounds for refusing to answer the question, the pertinency of the question, like the existence of a quorum (*Bryan, Fleischman*), becomes immaterial, since the witness would not have answered no matter how clear the committee made the pertinency of the question appear.

Accordingly, in *Watkins v. United States*, 354 U.S. 178, this Court stated that "[t]he final source of evidence as to the 'question under inquiry' is the Chairman's response *when petitioner objected to the questions on the grounds of lack of pertinency*" (p. 214; emphasis added); "[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency* ["] to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto" (pp. 214-215; emphasis added.)" And in *Barenblatt v. United States*, 360 U.S. 109, 123-124, the Court made express the implication in *Watkins*, and squarely held that the issue of pertinency must be raised before the investigating committee.

Furthermore, the Court held in *Barenblatt*, the issue

"*Watkins* specifically told the committee that 'I do not believe that such questions are relevant to the work of this committee . . .'"

"The footnote to this sentence reads "*Cf. United States v. Kamin*, 136 F. Supp. 791, 800" (354 U.S., p. 215, n. 55). At page 800 of the *Kamin* opinion, then District Judge Aldrich

of pertinency is not raised by a memorandum submitted by a witness to the committee saying that "I might wish to * * * challenge the pertinency of the question to the investigation" and quoting, from an opinion of this Court, "language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency." P. 123. The Court held that "[t]hese statements cannot * * * be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate, within the meaning of what was said in *Watkins* * * * to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" (pp. 123-124). See, also, *McPhaul v. United States*, 364 U.S. 372, 380-381.

And in *Deutch v. United States*, 367 U.S. 456, 468—where the Court found that "the petitioner was not made aware at the time he was questioned of the question then under inquiry nor of how the questions which were asked related to such a subject"—it never

emphasized the necessity of a specific objection on grounds of pertinency:

The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.

theless did not reverse the witness' conviction on this ground since (p. 469):

[T]he thoughts which the petitioner voiced in refusing to answer the questions about other people can hardly be considered as the equivalent of an objection upon the grounds of pertinency. Although he did indicate doubt as to the importance of the questions, the petitioner's main concern was clearly his own conscientious unwillingness to act as an informer. It can hardly be considered, therefore, that the objections which the petitioner made at the time were "adequate, within the meaning of what was said in *Watkins, supra*, at 214-215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection." *Barenblatt, supra*, at 124.

(b) In the present case, petitioner (who appeared before the subcommittee with counsel) did not make even the "contemplated" and "buried" objections to the pertinency of the questions that were made by the witness in *Barenblatt*, nor did he indicate any doubt as to the importance of the questions, such as was stated by the witness in *Deutch*. Petitioner's preliminary statement was no more than a general challenge to the power of the subcommittee to hold any hearings or to ask any questions of the witnesses before it. The statement claimed that the Committee had no valid legislative purpose, that the hearing violated the Bill of Attainder Clause of the Constitution and the First Amendment, and that the Committee's authorizing resolution did not authorize the

hearing and was unconstitutionally vague (*Statement, supra*, pp. 8-9). These contentions did not and could not constitute an objection to the pertinency of questions not yet asked. A similar statement attacking the jurisdiction and power of the committee was made by the witness in *Barenblatt*, but the Court concluded that this "general challenge to the power of the Subcommittee" was not adequate "to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" to apprise the witness of the pertinency of the questions. 360 U.S., p. 124.*

Petitioner likewise did not question the pertinency of any of the particular questions asked him during the course of the hearing. Instead, he repeated the objections in his statement: that the hearing was not within the power given the Committee by its authorizing resolution; that the hearing was intended to "bust" the union, or to expose petitioner, or to try and convict him, and therefore did not have a valid legislative purpose; and that the hearing as a whole and particular questions violated the First Amendment. In addition, he claimed that the Committee relied on informers who were liars. (*Statement, supra*, p. 11). None of these objections so much

* Compare the legal memorandum filed by the petitioner in *Barenblatt* (see the record in No. 35, Oct. Term, 1958, pp. 227-235) with the motion in this case (R. 220, 403-406). While in *Barenblatt* the memorandum contained "contemplated" and "buried" objections on the ground of pertinency (although the Court did not consider them sufficiently clear), here petitioner's statement did not make even those "contemplated" and "buried" objections.

as hinted to the subcommittee that petitioner was claiming that he did not understand the pertinency of the questions.

2. Petitioner Was Apprised of the Pertinency of the Questions

Assuming petitioner had objected to the pertinency of the questions at the hearings, and the issue whether he was properly apprised of their pertinency were thus here, the claim would be without merit. We assume that there are two steps in apprising the witness. First, the subject under inquiry must be explained to the witness. Second, the pertinency of the questions asked him to the subject must be explained to him. Both requirements were satisfied here.

(a) Petitioner was apprised, from at least three different sources, that the subject under inquiry at the hearings was Communist activity in labor unions. First, at the start of the hearings on February 28, the day petitioner first testified, the chairman of the subcommittee specifically stated (R. 219):

There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

This statement was made immediately before Julia Jacobs was called as the first witness. Petitioner, at the beginning of his testimony, indicated that he had heard Miss Jacobs' testimony (R. 242) and subse-

quently reaffirmed this fact (R. 274). Moreover, counsel representing petitioner also represented Julia Jacobs and was certainly present when the opening statement was made."

Second, as we have just noted, petitioner admitted knowledge of the testimony of Julia Jacobs. The questions asked by the Committee of Miss Jacobs—concerning the witness' employment and work in the labor movement and her possible Communist Party membership—clearly showed that the subject of the Committee's inquiry was Communist activity in labor unions (R. 221-227; and see R. 227-241). Miss Jacobs was questioned concerning many of the same activities about which petitioner was questioned, including the Square D strike (Hearings (GX 12; see p. 8, n. 2, *supra*), pp. 30-31) and the pilgrimage to Washington organized by the American Peace Crusade (*id.*, pp. 37-38). Moreover, Congressman Doyle explicitly restated the purpose of the hearings during Miss Jacob's testimony (R. 222):

[M]y questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist

"Petitioner contends (Pet. Br. 122) that the presence of his counsel when the opening statement was made is not sufficient. As we have shown, however, there is every indication that petitioner was present when the statement was made (see R. 101-109). In addition, it would certainly seem that petitioner could be charged with the knowledge of his counsel who counsel appeared for each of three witnesses (Miss Jacobs, Lawrence Cover, and petitioner) who appeared on the opening day of the hearings and the three, through counsel, filed a joint statement objecting to the Committee's authority (Statement, *supra*, pp. 8-9).

Party in your experience has undertaken to influence labor unions wherever you know anything about them.

May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any other group to their own Communist Party objectives.

The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening legislation dealing with subversive activities.

Third, during petitioner's appearance before the subcommittee, he was twice told by Congressman Doyle the precise subject under inquiry. Before petitioner was asked the question involved in count four, Congressman Doyle told him that the subcommittee was "trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president" (see Statement, *supra*, p. 12). Subsequently, at the time petitioner was directed to answer the question involved in count five Congressman Doyle stated (see Statement, *supra*, p. 13):

* * * I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * * the extent to which they were using it then and are using it now for their conspiratorial purposes."

(b) Thus, the subject of the subcommittee's inquiry—Communist activity in labor unions—was clearly and repeatedly brought home to petitioner. In addition, all six of the questions upon which petitioner was indicted and convicted were, either on their face or as shown by the statements made to petitioner at the time, pertinent to that subject.⁴⁷ The question involved in count one—whether petitioner was at the time of the hearings a member of the Communist Party—was on its face pertinent to the subject under inquiry. This Court in *Barenblatt* stated that the pertinency of an identical question (see 360 U.S., p. 114) to the subject of Communist activity in education "was clear beyond doubt" (p. 125). It is equally

⁴⁷ See also the statements of Congressman Doyle at the start of petitioner's testimony and after petitioner had refused to answer all the questions involved in the indictment (see Statement, *supra*, p. 9, and R. 376).

⁴⁸ As noted earlier (p. 61, n. 35, *supra*), the judgment below must be affirmed if petitioner's conviction on any one of the counts was valid.

pertinent to the subject of Communist activities in the labor field.

Petitioner was also apprised of the pertinency of the question involved in count two—"[y]ou have left us under the impression at this point by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson" (Statement, *supra*, p. 11). This question, when asked of an important labor official residing in Indiana, was clearly pertinent to an investigation of Communist activities in labor unions. Similarly, petitioner was apprised of the pertinency of at least half of the information sought by the question involved in count three—whether Elmer Johnson or Henry Aron ever addressed a group of people while petitioner was present.

Before petitioner was asked the question involved in count four—whether he knew Russell Nixon to be a Party member—petitioner had been told by Congressman Doyle that the subcommittee was investigating Communist control of the U.E. Petitioner had admitted that he was acquainted with Mr. Nixon and that he knew that Nixon was legislative representative of the U.E. in Washington (Statement, *supra*, pp. 11-12). This question concerning the Communist Party membership of a high union official was just as pertinent to the subject of Communist activities in labor unions as the question concerning whether petitioner himself was a Party member.

The subcommittee also explained to petitioner the question involved in count five—whether he had "an

active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (Statement, *supra*, pp. 12-14). The Committee counsel told petitioner that the question was directed to discovering "the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power." And Congressman Doyle stated that he wished to discover (Statement, *supra*, p. 13):

* * * [W]hat the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

In addition, before petitioner was asked the question involved in count six—who had solicited him as a sponsor of the American Peace Crusade—he was shown an article in the *Daily Worker* listing a "John Gojack, international vice-president, UERWMA" as an original sponsor of that organization (Statement, *supra*, p. 14).⁴⁰

⁴⁰ Petitioner does not raise the distinct issue whether the government proved at his trial that "the questions propounded by the congressional committee were in fact 'pertinent to the

D. PETITIONER WAS ADEQUATELY APPRISED THAT HIS OBJECTIONS TO THE COMMITTEE'S JURISDICTION HAD BEEN REJECTED

Petitioner contends that the Committee was required and failed to overrule his written objections to the Committee's jurisdiction (Statement, *supra*, pp. 7-9) before he was questioned. However, this contention is not properly before this Court, since, as pointed out by the court of appeals (348 F. 2d, pp. 356-358), it was not raised by petitioner's experienced counsel in either the district court or the court of appeals. Petitioner concedes as much, and offers no justification or excuse (Pet. Br. 126, n. 118).

In any event, the contention is without merit. Since petitioner's objections went not to specific questions, but to the very jurisdiction of the Committee to proceed with the inquiry (R. 405-406), the subcommittee's action in proceeding with the hearings and calling the three witnesses—including petitioner—on whose behalf the objections had been filed was an inescapable sign to petitioner and the others that the subcommittee had in fact rejected these objections.⁵⁰ Moreover, although petitioner's objections were in the form of a

question under inquiry' by the committee." *Deutch v. United States*, 367 U.S. 456, 468. And since this issue was not presented in the petition for certiorari, it is not before the Court. In any event, the evidence which we have relied upon to show that petitioner was apprised of the pertinency of the questions when he appeared before the subcommittee likewise demonstrates that the questions were, in fact, pertinent to the subject under inquiry.

⁵⁰ The subcommittee's counsel stated at the hearings that the motion had been considered by the subcommittee at the beginning of the hearings and that the subcommittee had unanimously voted at that time to overrule it (R. 374-375).

motion to vacate the subpoenas and set aside the hearings, neither counsel nor the witnesses (including petitioner) on whose behalf the motion was filed asked for a ruling before the witnesses were sworn—as they surely would have had they believed the Committee had not yet considered and disposed of their motion. Counsel merely asked that his motion challenging the Committee's jurisdiction be filed for incorporation in the record. A further indication that petitioner and the other witnesses understood perfectly that the Committee had rejected their objections may be found in the fact that the witnesses appeared in response to the subpoenas, were sworn, and answered some questions. In addition, petitioner was specifically directed to answer each question forming the basis of a count of the indictment (R. 269–270, 287–289, 296–297, 341–342, 361–362, 369);⁵¹ he was informed that these directions to answer were being given to establish a predicate for a motion to cite him for contempt (R. 265, 269) (compare *Bart v. United States*, 349 U.S. 219, 222); and the subcommittee persisted in demanding answers to its questions even after petitioner on numerous occasions orally repeated the contention made in his written motion that the hearing was completely unauthorized and invalid (*e.g.*, R. 283, 290, 328, 340).

In these circumstances, we fail to see how petitioner could have doubted that the Committee had overruled

⁵¹ The directions to answer the questions in counts three, four, five, and six followed Congressman Moulder's statement to petitioner that the subcommittee "understand[s] you object to all the questions being propounded here to you during this procedure" (R. 292)—another clear indication that the objections had been rejected by the subcommittee.

his objection to the hearings." In *Quinn v. United States*, 349 U.S. 155, 170—on which petitioner relies (Br. 125)—this Court held that the Committee is not required to use any set formula to indicate its disposition of an objection. Since it is plain that petitioner here was not "forced to guess the committee's ruling" on his objection to its power to proceed, we submit that "he has no cause to complain" (349 U.S., p. 170)."

III. THE INDICTMENT SUFFICIENTLY ALLEGED THE AUTHORITY OF THE COMMITTEE

Petitioner contends (Br. 29-45) that it is not sufficient for the indictment in a contempt-of-Congress case to allege that the particular subcommittee before which the witness appeared was authorized to act, but that the details of that authority must also be pleaded. In *United States v. Seeger*, 303 F. 2d 478 (C.A. 2) (following *United States v. Lamont*, 236 F. 2d 312

"That petitioner was aware of the Committee's ruling and fully intended to persist in his refusal to answer notwithstanding such ruling is shown by the fact that, after the subcommittee counsel's statement for the record that the subcommittee had voted unanimously to overrule the motion at the beginning of the hearings (see p. 83, n. 50, *supra*), petitioner again refused to answer the question specified in count one—"Are you now a member of the Communist Party?"—despite a direction that he answer (R. 379).

"In addition, the subcommittee expressly rejected in advance substantially the same objections petitioner had made in his motion when they were renewed as to specific questions. Compare petitioner's motion, described in the Statement, *supra* pp. 8-9, with the objections made prior to and upon the questioning forming the basis of count one: R. 242, 244, 264, 266, 269-270; count two: the foregoing plus R. 283, 287, 288, 289; count three: all the foregoing plus R. 290, 294-297; count four: all the foregoing plus R. 328, 340, 341-342; count five: all the foregoing plus R. 361-362.

(C.A. 2)), the Court of Appeals for the Second Circuit indicated that an indictment for contempt of Congress involving the House Un-American Activities Committee must show that the subcommittee was in fact authorized to conduct the inquiry in question.²⁴ The Court of Appeals for the District of Columbia Circuit, on the other hand, regards a conclusory allegation of authority as sufficient for purposes of the indictment. *Sacher v. United States*, 252 F. 2d 888, reversed on other grounds, 356 U.S. 576; *Shelton v. United States*, 280 F. 2d 701, reversed on other grounds *sub nom. Russell v. United States*, 369 U.S. 739.²⁵

A. We think that the view of the District of Columbia Circuit—that only the ultimate fact of the subcommittee's authority need be alleged—is the better view and fully consistent with the general principles of this Court's *Russell* decision. So far as is pertinent here, the purpose of an indictment is "to inform the defendant of the nature of the accusation against him." 369 U.S., p. 767. A conclusory allegation of authority surely suffices to place a de-

²⁴ Actually, the holdings of both *Seeger* and *Lamont* are narrower. See p. 90, n. 59, *infra*, and p. 92, n. 61, *infra*.

²⁵ In *Russell*, *supra*, this Court, in reversing six companion cases from the District of Columbia Circuit on the ground that the indictments were insufficient because the subject under inquiry had not been alleged, did not pass upon the rule of that circuit that the details of a subcommittee's authority need not be recited. That rule had been challenged in three of the six companion cases. See the briefs for petitioners in *Whitman v. United States*, *Liveright v. United States*, and *Price v. United States*, Nos. 10, 11 and 12, Oct. Term, 1961.

fendant on notice—without any ambiguity or uncertainty—of the precise nature of the accusation in a contempt-of-Congress case: that he willfully refused to answer pertinent questions when “summoned as a witness by the authority of either House of Congress” (2 U.S.C. 192). It surely comports with the spirit as well as the letter of Rule 7(c) of the Federal Rules of Criminal Procedure, which provides that “[t]he indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.”

To be sure, if the defendant refused to answer questions put to him by a subcommittee not authorized by Congress to conduct the inquiry, he could not be guilty of violating 2 U.S.C. 192; but that, we think, is properly a matter of proof rather than pleading. So long as the fact of authority is pleaded, the defendant should have no difficulty in determining—from the applicable resolutions of Congress and the Committee (see pp. 88-90, *infra*)—whether such allegation is true.” There is certainly no danger here like that found in *Russell*, where the indictments failed to specify the subject under inquiry by the subcommittee. Without the guidance of such specification, the defendants and the trial and appeal courts, in this Court’s view, were unable to determine whether the questions asked were pertinent. We find no similar uncertainty in omitting from the indict-

* If he has any question as to the precise chain of authority, he can file a motion for a bill of particulars. Indeed, petitioner in this case filed such a motion—but sought no further specification of the chain of authority. (R. 5.)

ment the links in the chain of authority from Congress to the subcommittee. Pertinency depends on the subject under inquiry—not whether the inquiring tribunal was an authorized one.”

B. This Court need not, however, resolve in the present case the alleged conflict on this point between the Second and District of Columbia Circuits, since the indictment here was sufficient even under the Second Circuit's strict standard. The present indictment not only alleges that the subcommittee was authorized but fully narrates the basis of its authority.

The relevant portion of the indictment begins by reciting (R. 1-2) the legislation that established the House Committee on Un-American Activities (the Legislative Reorganization Act of 1946, 60 Stat. 828) and the specific House Resolution reaffirming the Committee's existence at the beginning of the new Congress during the term of which petitioner was

“We derive support on this point from *United States v. DeBrow*, 346 U.S. 374. Involved in that case was an indictment for perjury, an offense which, as the Court noted in *Russell*, *supra*, presents to contempt charges a “persuasive [analogy] for some purposes” (369 U.S., p. 771, n. 18). An element of the offense of perjury is that the defendant's oath was “taken before a competent tribunal” (*DeBrow*, *supra*, 346 U.S., p. 376). An indictment was approved in *DeBrow* which alleged as to this element that the competent tribunal was a subcommittee of a Senate committee, “known as the Subcommittee on Investigations, a duly created and authorized subcommittee of the United States Senate” (p. 375). If the allegation of “duly created and authorized” is sufficient to satisfy the element of “competent tribunal” in a perjury case, it should, we think, suffice here.

subpoenaed and appeared (H. Res. 5, 84th Cong., 1st Sess.).²² These provisions not only define the scope of the investigatory authority granted to the Committee but in addition specifically provide that such authority may be exercised by subcommittees. The indictment then relates that the parent Committee authorized the

"Both the Act and the resolution provide as follows:

Rule X

Sec. 121. Standing Committees

17. Committee on Un-American Activities, to consist of nine members.

Rule XI

Powers and Duties of Committee

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary.

subpoenaing of petitioner to testify at hearings to be conducted by a subcommittee and that the subcommittee to conduct the hearings was appointed by Chairman Walter pursuant to Committee resolution of January 20, 1955. This resolution (GX 4, R 209-210) provides, as has been mentioned (pp. 68-69, *supra*), that the Chairman is "authorized * * * to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform * * *." The indictment then alleges that the hearings at which petitioner testified were held by the subcommittee under the specified "appointment and authorizations" (R 2).

Thus, the indictment sets forth a complete chain of authority from Congress to the subcommittee before which petitioner appeared. It alleges that Congress authorized the Un-American Activities Committee to investigate subversive activities and to delegate its full investigatory authority to subcommittees; that the Committee decided to question petitioner in aid of such an investigation; and that it duly delegated authority to do so to the subcommittee before which petitioner appeared. There is no missing link." Surely, further allegations on the question of the subcommittee's authority were not required to enable petitioner to defend against the contempt-of-Congress charge.

Petitioner argues (Br. 31-36) that the missing link is the failure to allege that the Committee delegated

"*United States v. Lamont*, 286 F. 2d 312, is thus not in point, since in that case there was "no allegation * * * linking the inquiry conducted by the subcommittee to the grant of authority dispensed to its parent committee." P. 317.

only a limited part of its investigatory authority to the subcommittee. But the Committee generally operates through subcommittees, and, when it does, the subcommittee is empowered to exercise the full authority of the Committee. Both the authorizing statute and the authorizing resolution, as we have seen, specifically provide for such an exercise of the power granted. And as the examples of authorizing resolutions gathered by petitioner show (Br. 37), even when the Committee sets forth in writing certain topics to be covered by the subcommittee, it carefully and customarily includes a general grant of authority to permit the subcommittee to act on "all other matters within the jurisdiction of the Committee." And, of course, the same was accomplished by the Committee's resolution of January 20, 1955, under which the subcommittee before which petitioner appeared was constituted (see pp. 89-90, *supra*). Although the parent Committee, when performing its functions through a subcommittee, may choose to limit the subcommittee's authority to narrower limits than that granted the Committee, there is no requirement that it do so and it did not do so here. Therefore, there is no basis for the allegation that petitioner urges should have been included in the indictment.*

Thus, on the facts of this case, there is no real conflict with the Second Circuit's *Seeger* decision (or, as noted above, n. 59, with the *Lamont* deci-

* We grant, of course, that a subcommittee may not exceed the scope of the authority delegated to it (see pp. 67-71, *supra*). We do not think the indictment need so allege, if, as here, it fully sets forth the chain of authority from Congress to the subcommittee in question.

sion on which the court in *Seeger* relied). The defect in the indictment involved in *Seeger* was that one of the authorizing resolutions—an essential step in the chain of authority—was left out." There is no such defect in the present indictment; no link in the chain of authority was omitted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APRIL 1966.

"The first paragraph of the indictment purports to relate the substance of a resolution passed by the Committee on Un-American Activities on June 8, 1955 directing the subcommittee to conduct the investigation. The second paragraph then states that "pursuant to said direction" the subcommittee conducted the hearings at which Seeger appeared as a witness. But the resolution of June 8, 1955 * * * was *not* such an authorization to the subcommittee. It was merely a direction to the parent Committee's clerk to proceed with an investigation. * * * The resolution of July 27, 1955 * * *, which actually purports to authorize the subcommittee to proceed with the hearings was nowhere mentioned. In other words, * * * the indictment contained a wholly misleading and incorrect statement of the basis of that authority. [303 F. 2d, p. 484.]

APPENDIX I

COMMITTEE ON UN-AMERICAN ACTIVITIES ANNUAL REPORT FOR THE YEAR 1954¹

This Annual Report of the Committee on Un-American Activities for the year 1954 is submitted to the House of Representatives in compliance with that section of Public Law 601 (79th Cong.) which provides: "The Committee on Un-American Activities shall report to the House (or to the Clerk of the House, if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable."

Early in 1954 the Attorney General of the United States advised the Congress that certain legislation was considered necessary to strengthen effectively the national security. Four of these recommendations by the Attorney General were embraced within those previously made by the committee. These were for capital punishment in instances of espionage committed in time of peace; immunity for certain witnesses appearing before duly authorized Federal bodies; for the admissibility of evidence secured by wiretapping or technical devices; and for legislation to break Communist control over certain labor unions. The Congress in 1954 passed and the President signed into law three of these recommendations originally proposed by this committee and subsequently requested by the Attorney General. A law permitting the use

¹ Portions of the Report were read into the record below, see Tr. 260-271.

of evidence secured by technical devices in cases involving espionage and matters relating to internal security passed the House but did not obtain approval in the Senate.

On the basis of hearings and investigations, the committee during 1954 issued several reports to the Congress and the American people. The first of these reports was "Colonization of America's Basic Industries by the Communist Party of the U.S.A." This report reflects the committee's findings on the Communist Party's endeavors to secure a foothold in the vital basic industries of the country. The committee points out in this report that the Communist Party had directed its intellectuals and white-collar workers to leave employment in their own chosen fields and to obtain positions in industries vital to defense, such as steel, electricity, and the maritime. In many cases, persons were required to leave their homes and travel to distant cities in order to carry out this Communist directive. The committee issued this report to warn and alert the Congress and the industries involved regarding these efforts by the Communist Party in the United States.

The committee also reported the details of an exhaustive investigation and hearings relating to a publication, which while posing as a legitimate trade-union journal, is in reality nothing more than a mouthpiece for Communist propaganda. The "Report of the March of Labor" clearly establishes the Communist "front" character of that publication.

INVESTIGATION OF COMMUNIST ACTIVITIES IN VARIOUS CITIES AND STATES

On April 7 through April 9, 1954, a subcommittee of the Committee on Un-American Activities resumed hearings in Albany, dealing principally with Communist infiltration of vital defense industries and education within the capital area and throughout the State of New York and adjacent States.

Mr. Leo Jandreau, former business agent for United Electrical Radio and Machine Workers of America, Local 301, General Electric Workers, Schenectady, N.Y., who at the time of his testimony was business agent for IUE-CIO, Local 301, testified that he had never been a member of the Communist Party.

Chicago, Ill.

The subcommittee received testimony in elaboration and corroboration of previous testimony relative to the Communist control of the Farm Equipment Workers of the United Electrical, Radio, and Machine Workers of America (FE-UE). This testimony was furnished the committee by Mr. Walter W. Rumsey. In the course of this testimony Mr. Rumsey identified as a Communist John T. Watkins, who has served as an official of the United Farm Equipment and Metal Workers before and after its expulsion from the CIO. The Committee investigators endeavored to locate Mr. Watkins as well as Abe Feinglass, another union official who had been identified as a member of the Communist Party. These efforts were unsuccessful and Mr. Watkins and Mr. Feinglass were heard later in Washington, D.C. In view of Mr. Watkins' denial of Communist Party membership and his refusal to

answer questions concerning individuals known to him as being members of the Communist Party, the committee voted to refer all testimony relating to this matter to the Department of Justice for possible perjury prosecution and the Congress subsequently approved the committee's recommendation that Mr. Watkins be cited for contempt of Congress.

* * * * *

Dayton, Ohio, Area

Continuing the committee's investigation of Communist infiltration in basic industries throughout the United States, hearings were held in Dayton, Ohio, September 13, 14, and 15 of this year. The Committee was fortunate in having the testimony of one Arthur Paul Strunk, who had for more than 7 years served as financial secretary for the Dayton Communist Party while acting as an undercover agent for the Federal Bureau of Investigation. Mr. Strunk was not only able to give the committee a complete picture of the activities of the Communist Party in the Dayton area since 1945, but was also able to document and completely expose the part played by the Communist Party in the Univis Lens strike in 1948.

* * * * *

In connection with role of the Communist Party in the Univis Lens strike, your committee was again fortunate in having the testimony of one Loether Wornstaff, one of the few non-Communist members of the strike strategy of the UE during this strike.

Michigan

These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Michigan, in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained.

The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success. The concentration of the Communist Party as outlined by this report is not the figment of a dream by the committee but comes directly from the Communist Party itself. This concentration is set forth in a directive to all Communist groups, sections, commissions, and departments, which the committee obtained during its investigation. This directive, while intending to advertise the Communist Party as an organization interested in furthering the trade-union movement, falsifies its own advertisement by placing all emphasis on the need to repeal all laws used against the Communist Party and its members, including the Smith Act, the non-Communist affidavit section of the Taft-Hartley law and the Walter-McCarran Immigration Act. Of secondary importance in the directive, but equally stressed, is what the Communists refer to as "the People's Peace" program. This program is set forth as a campaign against NATO, friendship with the Soviet Union, and the opening of trade channels with the "People's Democracies", China, and the Soviet Union.

As a result of the hearings held in Michigan in 1952 and again in 1954, the Committee on Un-American Activities calls upon the American labor movement, in addition to its ever increased vigilance toward communism, to amend its constitutions where necessary in order to deny membership to a member of the Communist Party or any other group which dedicates itself to the destruction of American's way of life. It is certainly not within the best interests of the security of the United States, nor of the interest of the unions, to permit a member of the Communist Party or any other totalitarian party to work 8 hours a day in an American industry with the protection of a union contract and, at the same time, supply him with a captive audience of thousands through which he can preach his program of destruction. It is said that the worker is far too smart to be suckered into accepting the Communist harangue. It is admitted that the American worker, through education on the evils of communism and other totalitarianisms by both his union and his employer, has more knowledge on the subject today than at any time during his life. Nevertheless, the Communist Party is receiving new recruits daily from the ranks of labor, admittedly not so many as in the past. It is difficult to believe, however, that this recruitment would be as great if Communist Party organizers and advocates were removed from the captive audience which union and industry place around them in the shop.

PACIFIC NORTHWEST AREA

(Portland, Oreg.)

The House Committee on Un-American Activities held hearings in Portland, Oregon, June 18 and 19, 1954. The hearings and investigation centered largely around communistic infiltration of education, professional groups, and labor.

The committee held all investigations during the past year in the main, Portland, after approval of a majority of the members of the committee. At the opening of each public hearing the presiding chairman clearly outlined the purpose of the investigation and hearing. At no public hearing were there fewer than two members of the committee in constant attendance. Persons identified for the first time in public hearing as having employment affiliations were notified of the fact by registered letter, where practicable.

The hearing investigations and hearings by the committee last year involved such evidence as the following:

Documented proof that a Communist-dominated union signed off workers' dues for Communist purposes presented in the course of committee investigations and hearings on District 2 of the United Electrical, Radio, and Machine Workers of America. The District 2 supervisory union took in Indians and Mexicans from headquarters in Fort Wayne, Indiana. These hearings were printed under the title "Fort Wayne, Ind., Area."

Portions of the Report were read into the record below:

APPENDIX II

COMMITTEE ON UN-AMERICAN ACTIVITIES ANNUAL REPORT FOR THE YEAR 1955¹

In accordance with the committee's rules of procedure all investigations during the past year were instituted after approval by a majority of the members of the committee. At the opening of each public hearing the presiding chairman clearly outlined the purpose of the investigation and hearing. At no public hearing were there fewer than two members of the committee in constant attendance. Persons identified for the first time in public hearing as having subversive affiliations were notified of the fact by registered letter, where practicable.

Wide-ranging investigations and hearings by the committee last year uncovered such evidence as the following:

Documented proof that a Communist-dominated union siphons off workers' dues for Communist purposes was produced in the course of committee investigations and hearings on District 9 of the United Electrical, Radio, and Machine Workers of America. UE District 9 supervises union locals in Indiana and Michigan from headquarters in Fort Wayne, Indiana. These hearings were printed under the title, "Fort Wayne, Ind., Area."

¹ Portions of the Report were read into the record below, on Tr. 272-286.

Newark, N. J. Area

Evidence of the continued Communist domination of the UE was graphically presented by these witnesses. Their testimony was bolstered by the appearance before the committee of 12 current officials, organizers or employees of the UE in the Newark area. The 12 consistently invoked their constitutional privilege against self-incrimination in refusing to answer questions by the committee, despite previous testimony placing these individuals in the Communist Party. Top official among the 12 was James McLeish, Sr., president of the UE District Council 4, who administers union affairs in southern New York and northern New Jersey from headquarters in Newark.

The now familiar pattern of a handful of Communists wielding iron control over union locals composed of hundreds of members was outlined again at the Newark hearings. Witness Pollock had joined the Communist Party with the understanding that such membership was essential to his holding the positions of international organizer and local president in the UE. He described Communist Party caucuses at which 7 or 8 Communist Party members decided what the union would do at its regular meetings. Union funds were diverted to various projects of the Communist Party and its front organizations and to subscriptions to Communist publications under the guidance of this minority, whose rule was facilitated by failure of the majority of union members to attend union meetings.

An extraordinary and courageous fight, waged by a handful of loyal American trade unionists against strongly entrenched Communist leaders of a UE local in Newark, was related to the committee by Anthony

DeAquino and Julius Kolovetz. The two witnesses testified that, as members of UE Local 447 representing some 5,000 employees, they were disgusted to find that Communists "owned the union, lock, stock, and barrel and treasury" and "did anything they wanted and how they wanted to do it". Mr. DeAquino and Mr. Kolovetz decided to join the Communist Party cell within the union in order to gather evidence for a showdown fight with the Communists for control of the union. While posing as Communists, the two men obtained firsthand lessons in totalitarian methods. They observed the Communists' complete disregard for union rules whenever the interests of the Communist Party came in conflict. They saw union funds drained off for Communist Party campaigns and front organizations; they participated in a Communist-led strike involving no legitimate labor issue; and they obtained documentary evidence that worker seniority records were tampered with in order to save the jobs of Communists at the expense of loyal employees.

When this evidence was finally presented to the total membership of local 447, Communists were voted out of control. But not before the two witnesses suffered physical violence from Communist gangs as well as fantastic smear attacks. Mr. DeAquino was represented as a safe-robber to the union membership and diabolic attempts were made to break up his home. Furthermore, to circumvent Communist chicanery in the crucial union election which ousted the Communists, loyal unionists were required to go to the considerable expense of hiring the services of the Honest Ballot Association.

This aggressive action by Mr. DeAquino and Mr. Kolovetz in fighting Communist domination of their union is without comparison in the record of this com-

mittee's hearings. The committee expresses its admiration of these trade unionists and hopes that their story may prove profitable to other loyal unionists who are still victims of a ruthless Communist leadership. The extreme difficulties, and indeed actual physical dangers, involved in the removal of Communists in control of unions, demonstrate the need for a speedy application of legislation enacted last year to curb Communist domination of unions. The legislation, which was recommended by this committee, will strip unions of bargaining rights before the National Labor Relations Board when the Subversive Activities Control Board has determined such unions to be Communist-infiltrated and controlled.

Fort Wayne, Ind., Area

The committee's continued investigation into Communist-dominated unions last year produced documented proof that leaders of such unions have misappropriated workers' dues for Communist Party purposes.

Proof was obtained in the course of preparation for committee hearings on the activities of District 9 of the United Electrical, Radio, and Machine Workers of America. This district has headquarters in Fort Wayne, Indiana, and supervises the affairs of local unions in both Indiana and Michigan.

The national organization of UE was expelled from the CIO in 1949 because of the union's flagrant subservience to the Communist Party line. The committee scheduled an investigation and hearing in 1955 to determine whether the district office which guides locals in two important Midwest States was continuing the discredited policies of the national UE

and placing Communist Party objectives above union interests.

Investigation preceding the hearings showed that District 9 of the UE was in fact operating under the control of Communists and their apologists, with workers' interests only a secondary concern when party purposes conflicted. In the course of this investigation, the committee obtained the official minutes of various meetings of the executive board of UE District 9. These documents contained incontrovertible evidence that the leadership of District 9 had diverted workers' union dues to the support of the Communist Party.

The minutes obtained by the committee covered meetings of the District 9 executive board held on December 16, 1950; February 2, 1952; March 28, 1952; September 10, 1952; and October 6, 1952. With the record of only five executive board meetings in its possession, the committee can document the appropriation of more than \$2,000 to Communist causes. The committee finds this practice particularly reprehensible in view of the fact that this money came from dues paid by workers who sincerely believed they were strengthening legitimate labor objectives. Less than 5 percent of the workers represented by Communist union leadership are members of or sympathetic to the Communist Party. Therefore, 95 percent of the membership of such unions are loyal Americans unwillingly or unwittingly forced to help finance a subversive conspiracy whose ultimate aim would destroy the very concept of a free labor movement.

Among the Communist organizations to which the district 9 executive board diverted workers' dues are the National Negro Labor Council, which has been

cited as subversive by the Attorney General, and the Prisoners' Relief Committee, which solicited financial help for Communist Party leaders arrested under the Smith Act. District 9 also "generously" gave away workers' money to such notorious individuals as Harry Bridges and Harold Christoffel. Harry Bridges had been seeking funds to fight deportation proceedings. Harold Christoffel was active with other Communists in the Allis-Chalmers strike, which attempted to sabotage war production during the Hitler-Stalin pact. He had sought funds to defend himself against a perjury conviction resulting from his appearance before the House Committee on Education and Labor. By no stretch of the imagination can these expenditures serve the interests of any worker or union.

A number of present or former leaders in the affairs of UE District 9 were summoned to appear before the committee in public hearing in order to explore more fully the Communist abuse of the concept of unionism.

Witnesses heard by the committee included: John T. Gojack, president of UE District 9; David Mates, a UE international organizer assigned to district 9; and Julia Jacobs, former secretary to John Gojack in Fort Wayne, Indiana, and at the time of her appearance office secretary of UE Local 931 in St. Joseph, Michigan. These witnesses refused to answer all questions put to them by the committee regarding Communist influences in their union. All but one invoked the fifth amendment when questioned concerning charges regarding their own membership in the Communist Party.

Mr. Gojack invoked the First amendment in abusive and contemptuous testimony before the com-

mittee, and the House of Representatives has formally requested the Department of Justice to institute legal proceedings against Mr. Gojack for contempt of Congress.

The attitude of Mr. Gojack before the committee belied his professions of concern for the rights of organized labor. So does his record of energetic support of the Communist Party over a period of many years.

Julia Jacobs, the office secretary of local 931, St. Joseph, Michigan, is a Communist servitor whom the Communist have moved about at will. When she was identified as a Communist Party member in Ohio and her usefulness impaired, she was moved to Fort Wayne, Indiana, where she became a secretary to John Gojack. When need for a militant Communist became vital in St. Joseph, Michigan, she was again moved. In St. Joseph she devoted much of her effort to deceiving workers into believing that support of the Communist Party and its members was support of the trade-union movement as a whole.

David Mates, the UE international organizer, has been a Communist Party functionary for years. Evidence in the possession of the committee indicates that he was chairman of the Labor Commission of the Communist Party for Michigan. Mr. Mates was responsible for the employment of many Communists in local union offices. In this manner, the Communist Party always had informers in the midst of the workers.

The committee has been trying to determine whether or not these informers are utilized by the Communist Party for the purpose of industrial espionage. The three aforementioned witnesses possess important knowledge which could assist the committee in its in-

vestigation of this type of Communist subversion. Their refusal to answer questions thwarted the legislative process to an extent only the witnesses themselves know. Fortunately, documents obtained during the investigation added much to the knowledge which the Congress possesses on the international Communist conspiracy as it relates to the labor movement.

SUPREME COURT OF THE UNITED STATES

No. 594.—OCTOBER TERM, 1965.

John T. Gojack, Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Circuit.
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[June 13, 1966.]

MR. JUSTICE FORTAS delivered the opinion of the Court.

This case is a sequel to this Court's decision in *Russell v. United States*, 369 U. S. 749, and companion cases. One of those cases related to the same person who is petitioner here and to the same events.

Petitioner appeared before a Subcommittee of the House Committee on Un-American Activities on February 28 and March 1, 1955. He answered certain questions, but refused to answer others concerning his affiliation with the Communist Party, the affiliation of others, and his connection with a "Peace Crusade." He had challenged the jurisdiction of the Committee and the Subcommittee, the authorization of each, and the constitutionality of the inquiry in general and with specific reference to the questions which he declined to answer.¹ He did not and does not invoke the Fifth Amendment.

¹ At the outset of the hearings, petitioner's counsel filed a motion which asked that the subpoenas be vacated and the hearings "set aside" on the grounds, among others, that the Committee was not engaged in "a legislative investigation for a bona fide legislative purpose," but rather in an effort to destroy the labor union of which petitioner was an officer; that the "Committee's basic resolution" is unconstitutional because "no person can determine from it the boundaries of the Committee's power," and that in any event it did not authorize this investigation; and that the First Amendment forbids compulsory disclosure of political beliefs and affiliations.

He was indicted for contempt of Congress under 2 U. S. C. § 192² as a result of his refusals to answer. He was convicted. In *Russell v. United States*, *supra*, this Court reversed, holding that the indictment was defective because it did not allege the "subject under inquiry." The Court noted that under § 192 specification of the subject of the inquiry is fundamental to a charge of violating its provisions. Absent an allegation of the subject matter of the inquiry, this Court held, there is no way in which it can be determined whether the factual recitals of the indictment charged a crime under § 192—that is, a refusal to answer questions "pertinent to the inquiry," and within the legislative competence of Congress.³

Petitioner was thereafter re-indicted. The deficiency in the first indictment was sought to be cured by a recital

² This provision, enacted in 1857, reads as follows:

"Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1000 nor less than \$100, and imprisonment in a common jail for not less than one month nor more than twelve months."

³ The leading case on the requirement of legislative purpose is *Kilbourn v. Thompson*, 103 U. S. 168. *Kilbourn* did not arise under § 192, but was a damage suit arising out of a direct exercise by the House of Representatives of a claimed power to punish for contempt. The Court held that since the subject matter of the investigation had not been legislative in character, the order of contempt of the House, directing its Sergeant-at-Arms to imprison the contumacious witness, afforded the Sergeant no protection from liability. See, for cases under § 192, *In re Chapman*, 166 U. S. 661, 667-670; *McGrain v. Daugherty*, 273 U. S. 135, 173-180; *Sinclair v. United States*, 279 U. S. 263, 291-295; *Quinn v. United States*, 340 U. S. 155, 160-161; *Watkins v. United States*, 354 U. S. 178, 187, 200; *Barenblatt v. United States*, 360 U. S. 109, 133; *Wilkinson v. United States*, 365 U. S. 399, 410-412. See also note 6, *infra*.

that "the subject of these hearings was Communist party activities within the field of labor" Petitioner was again convicted and given a general sentence of three months' imprisonment and a \$200 fine. The Court of Appeals for the District of Columbia Circuit affirmed *per curiam*. 348 F. 2d 355 (C. A. D. C. Cir. 1965). We granted certiorari. 382 U. S. 937. We reverse. It is now clear that the fault in these proceedings is more fundamental than the omission from the indictment of an allegation of the "subject of the inquiry" being conducted by the Subcommittee. The subject of the inquiry was never specified or authorized by the Committee, as required by its own rules, nor was there a lawful delegation of authority to the Subcommittee to conduct the investigation.

Petitioner here urges that we reconsider this Court's decision in *Barenblatt v. United States*, 360 U. S. 109. In *Barenblatt* this Court upheld the authority of the Committee to investigate Communist infiltration into the field of education. In the circumstances of that case, the Court sustained the constitutionality of the investigation and of the Committee's inquiry into petitioner's alleged membership in the Communist Party. Since we decide the present case on other grounds, it is not necessary nor would it be appropriate to reach the constitutional question.

I.

Rule I of the Rules of Procedure of the House Committee on Un-American Activities provides that "No major investigation shall be initiated without approval of a majority of the Committee." Rule XI, par. 26, of the Rules of the House of Representatives requires each Committee of the House to keep a record of all committee actions. There is no resolution, minute or record of the Committee authorizing the inquiry with which we are concerned.

The Solicitor General's brief in this Court states that: "Admittedly, there is no direct evidence that the Committee approved the investigation of Communist activities in the field of labor of which the hearings at which petitioner was called to testify were a part." A footnote to this statement concedes that "We do not dispute that this investigation was a 'major' one and that approval by a majority of the Committee was therefore required."

The Government's only plea in avoidance of this obvious deficiency is that we should "infer" Committee approval of the inquiry at which petitioner was required to respond to questions, because it was part of the Committee's alleged "continuing investigation" of Communist activities in the labor field.⁴ But this is clearly impermissible. We are not here dealing with the justification for an investigation by a committee of the Congress as a matter of congressional administration. That is a legislative matter. We are here concerned with a criminal proceeding. It is clear as a matter of law that the usual standards of the criminal law must be observed, including proper allegation and proof of all the essential ele-

⁴ There is some evidence in the record that the House Committee had "intermittently" (Brief for the United States, p. 4) investigated the union of which petitioner was an officer as a part of its alleged "continuing investigation." However, nowhere in the record does any authorization of such a continuing investigation appear. In any event, the authorization of a "major investigation" by the full Committee must occur during the term of the Congress in which the investigation takes place. Neither the House of Representatives nor its committees are continuing bodies. Cf. *Anderson v. Dunn*, 4 Wheat. 204, 231; *Marshall v. Gordon*, 243 U. S. 521, 542. It is the practice of the House to adopt its Rules—including the Rule which establishes the Un-American Activities Committee and defines the scope of its authority—at the beginning of each Congress. See, e. g., 109 Cong. Rec. 14, 88th Cong., 1st Sess. (1963); 101 Cong. Rec. 11, 84th Cong., 1st Sess. (1955).

ments of the offense.⁴ Moreover, the Congress, in enacting § 192, specifically indicated that it relied upon the courts to apply the exacting standards of criminal jurisprudence to charges of contempt of Congress in order to assure that the congressional investigative power, when enforced by penal sanctions, would not be abused.⁵

It can hardly be disputed that a specific, properly authorized subject of inquiry is an essential element of the offense under § 192. In *Russell*, this Court held that the definition of the subject under inquiry is "the basic preliminary question which the federal courts . . . [would] have to decide in determining whether a criminal offense had been alleged or proved." "Our decisions have pointed out that the obvious first step in determining whether the questions asked were pertinent to the subject under inquiry is to ascertain what that subject was." 369 U. S., at 756-757, 758-759. See also *Wilkinson v. United States*, 365 U. S. 399, 407-409; *Deutch v. United States*, 367 U. S. 456, 467-469; *Watkins v. United States*, 354 U. S. 178, 208-215; *Sinclair v. United States*, 279 U. S. 263, 295-296. In *United*

⁴ See, e. g., *Watkins v. United States*, 354 U. S. 178, 208; *Russell v. United States*, 369 U. S. 749, 755; *United States v. Lamont*, 18 F. R. D. 27, 37 (D. C. S. D. N. Y. 1955), *aff'd*, 236 F. 2d 312 (C. A. 2d Cir. 1956).

⁵ For example, in connection with the debates on § 192, Senator Bayard, who bore the brunt of the argument for the bill in the Senate, said: "It is a rule of law very well settled, that if there is no jurisdiction over the subject-matter, the proceeding is void. In such a case, of course, a court of justice would decide that the witness could not be compelled to answer for want of jurisdiction." Cong. Globe, 34th Cong., 3d Sess., p. 439 (1857). See also *id.*, at 439-440.

In *Russell*, this Court said, "The obvious consequence [of the Congressional purpose in § 192], as the Court has repeatedly emphasized, was to confer upon the federal courts the duty to accord a person prosecuted for this statutory offense every safeguard which the law accords in all other federal criminal cases." 369 U. S., at 755.

States v. Rumely, 345 U. S. 41, Mr. Justice Frankfurter observed that the resolution defining the subject of a committee's inquiry is the committee's "controlling character" and delimits its "right to exact testimony." 345 U. S., at 44. Cf. *Sinclair v. United States*, 279 U. S. 201, 295-298. This Court made it clear in *Watkins v. United States*, 354 U. S. 178, 201, 206, that pertinency is a "jurisdictional concept" and it must be determined by reference to the authorizing resolution of an investigation. The House Committee on Un-American Activities has itself recognized the fundamental importance of specific authorization by providing in its Rule I that a major inquiry must be initiated by vote of a majority of the Committee. When a committee rule relates to a matter of such importance, it must be strictly observed. *Yellin v. United States*, 374 U. S. 109. Since the present inquiry is concededly part of a "major investigation" and the Committee did not authorize it as required by its own Rule I, this prosecution must fail. There is no basis for invoking criminal sanctions to punish a witness for refusal to cooperate in an inquiry which was never properly authorized.

Indeed, the present case illustrates the wisdom of the Committee's Rule requiring specific authorization of a major investigation. Here, in the absence of official authorization of a specific inquiry, statements were made as to the subject and purpose of the inquiry which, to say the least, might have caused confusion as to the subject of the investigation, and might well have inspired respectable doubts as to legal validity of the Committee's purposes.¹ A brief recapitulation of the relevant facts will demonstrate this:

1. On November 19, 1954, about a month and a half before appointment of the Subcommittee, the Chairman

¹ In the absence—as here—of any specific authorization of the inquiry and in view of the broad and conflicting statements of the

of the Committee was reported as having announced that large public hearings in industrial communities" would be held to expose active Communists as part "of a new plan for driving Reds out of important industries." *

2. On February 14, when a representative of petitioner's union appeared to request a postponement, the Chairman of the Committee stated that "all of us are interested in seeing your union go out of business." A similar statement by the Chairman of the Subcommittee was reported in the press on February 15.

3. On February 21, the record shows that a newspaper in St. Joseph, Michigan, reported a statement of the Committee Chairman that the hearing would expose petitioner and another subpoenaed witness as "card carrying Communists" and that "The rest is up to the community." The story noted that the rescheduled hearing would pre-

committee members as to the purpose of the inquiry, the present case presents a formidable problem of the "vice of vagueness" which troubled the Court in *Watkins*, 354 U. S., at 209. We do not reach that problem because we decide the case on other grounds.

*The record contains the following news account, the accuracy of which was not controverted:

"Rep. Francis E. Walter (D. Pa.) who will take charge in the new Congress of House activities against Communists and their sympathizers, has a new plan for driving Reds out of important industries.

"He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

"By this means, he said, active communists will be exposed before their neighbors and fellow workers, 'and I have every confidence that the loyal Americans who work with them will do the rest of the job.'

"Hearings of a similar nature have been held in local areas, but

cede by three days a representation election, involving the union, at St. Joseph.

4. Near the close of the testimony of the first witness at the hearing, the Chairman and other members of the Subcommittee disavowed any effort "to break or bust unions," but added that the Committee's purpose was to expose and break up Communist control of unions.

5. At one point in the hearing, the member of the Subcommittee who was then presiding stated that the purpose of the hearing was to consider testimony relating to Communist Party activities within the field of labor, but went on to refer to other purposes. He said that the hearing would also consider "the circumstances under which members of the Communist party in the United States were recruited for military service in the Spanish Civil War, and to ascertain the method used by the Communist party in securing assistance from the medical profession in carrying out its objectives."

We do not characterize these statements or appraise their legal effect. They are relevant here only to demonstrate the insuperable hurdle of "inferring," as the Government suggests, the authorization of the inquiry in the absence of a specific statement and the particularized authorization required by the Committee's own rules. Obviously, some of the statements made as to the Committee's purposes exceed the bounds which would be enforced by criminal sanctions,* and others do not correspond to the allegation in the second indictment that

Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"We will force these people we know to be Communists to appear by the power of subpoenas," Rep. Walter said, "and will demonstrate to their fellow workers that they are part of a foreign conspiracy."

* This Court has emphasized that there is no congressional power to investigate merely for the sake of exposure or punishment, pro-

GOJACK v. UNITED STATES.

the subject of the inquiry was "Communist party activities within the field of labor."

It should be noted that Rule I of the Committee has a special significance in the case of the House Un-American Activities Committee. The Committee is a standing committee of the House, not a special committee with a specific, narrow mandate. Its charter is phrased in exceedingly broad language. It is authorized to make investigations of un-American and subversive "propaganda" and "propaganda activities" and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation." To support criminal prosecution under § 192, this generality must be refined as Rule 1 contemplated. Otherwise, it is not possible for witnesses to judge the appropriateness of questions addressed to them, or for the Committee, the Congress, or the courts to make the essential judgment which § 192 requires: whether the accused person has refused "to answer any question pertinent to the question under inquiry."¹⁰

It now appears that the investigation and the "question under inquiry" in petitioner's case were neither properly authorized nor specifically stated. Nor was the

tiicularly in the First Amendment area. In *Watkins v. United States*, 354 U. S. 178, the Court stated:

"We have no doubt that there is no congressional power to expose for the sake of exposure." *Id.*, at 200.

"There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. . . . Investigations conducted solely . . . to 'punish' those investigated are indefensible." *Id.*, at 187.

See also cases cited at note 3, *supra*; and see note 6, *supra*.

¹⁰ In *Watkins*, 354 U. S., at 200-216, this Court considered the bearing upon the statutory requirement of pertinency of the Committee's status as a standing committee, of its vague charter, and of failure to define the scope of its activities within that charter.

purpose of the inquiry clearly understood, apparently even by the members of the Subcommittee themselves. Although at the outset of the hearings the Subcommittee Chairman did allude to "Communist party activities within the field of labor" as the subject-matter under investigation, statements and declarations of Committee members were at variance with this purported purpose. The recital in the second and revised indictment that it was "Communist party activities within the field of labor" was therefore based on quicksand. Obviously, this Court's decision in *Russell* cannot be satisfied by a mere statement in the indictment, having no underpinning in an authorizing resolution, that the recited subject was in fact the subject of the inquiry. *Russell* called for more than a draftsman's exercise.

II.

There is in this case another fatal defect. The hearings in which petitioner was called to testify were before a Subcommittee of the House Committee on Un-American Activities. Pursuant to Committee authorization, the Chairman on February 9, 1955, appointed a subcommittee of three members to conduct hearings at which three named witnesses, including petitioner, were to be called. Neither the resolution nor any minutes or other records of the Committee stated the subject matter committed to the subcommittee or otherwise described or defined its jurisdiction in terms of subject matter.¹¹

¹¹ The indictment refers to Committee action taken on three dates, and the proof at trial provided no other source of authority for the Subcommittee. None of these designates or describes the subject matter of the inquiry or authorizes the subcommittee to conduct it. The Committee's minutes for these three dates are as follows:

On January 20, 1955, the House Committee authorized its Chairman

"from time to time to appoint subcommittees composed of three or more members of the Committee on Un-American Activities, at his

Once again, we emphasize that we express no view as to the appropriateness of this procedure as a method of conducting congressional business. But once again we emphasize that we must consider this procedure from the viewpoint not of the legislative process, but of the administration of criminal justice, and specifically the application of the criminal statute which has been invoked.

Viewed in this perspective, the problem admits of only one answer. Courts administering the criminal law cannot apply sanctions for violation of the mandate of an agency—here, the Subcommittee—unless that agency's authority is clear and has been conferred in accordance with law.

one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the Committee as a whole is authorized to perform."

Thereafter, on February 9, a meeting of the House Committee was held, the minutes of which record the following:

"Mr. Scherer moved that David Mates and John Gojack be subpoenaed to appear before a subcommittee of the Committee on Internal Security [sic] in open hearing at Fort Wayne, Indiana, and that a Dr. Scharfman [sic—Dr. Shafarman] be subpoenaed to appear in executive session at Fort Wayne, Indiana. The Chairman designated Mr. Moulder, Mr. Doyle, and Mr. Scherer as a subcommittee to conduct the hearings in Fort Wayne, Indiana, and set the time at February 21, 1955."

The House Committee met again on February 23, and the following took place:

"The hearings scheduled to be held at Fort Wayne, Indiana, were discussed. The Chairman stated that upon learning that a National Labor Board election was to be held in Fort Wayne on February 24, he continued the hearings until February 28 and set the place for the hearings in Washington, D. C. Mr. Scherer moved that the Committee hold hearings at a subsequent date in Fort Wayne. The motion died for want of a second. The Committee agreed that after the hearings on February 28 it would then be determined whether further hearings in Fort Wayne would be necessary."

We do not question the authority of the Committee appropriately to delegate functions to a subcommittee of its members, nor do we doubt the availability of § 102 for punishment of contempt before such a subcommittee in proper cases. But here, not only did the Committee fail to authorize its own investigation, but it also failed to specify the subject of inquiry that the Subcommittee was to undertake. The criminal law cannot be used to implement jurisdiction so obtained, without metes and bounds, without statement or description of the subject committed to the Subcommittee. *United States v. Seeger*, 303 F. 2d 478 (C. A. 2d Cir. 1962). Cf. *United States v. Lamont*, 18 F. R. D. 27 (D. C. S. D. N. Y. 1955), *aff'd*, 236 F. 2d 312 (C. A. 2d Cir. 1956). In *Seeger*, a contempt conviction had been obtained for refusal to answer questions of a subcommittee. The resolution establishing the Subcommittee, like that in the present case, announced the date for the hearing and stated the Subcommittee's members, but stated no subject-matter. As Judge Moore, concurring, put it:

"Even the most liberal construction cannot transform . . . [this] into a resolution of the Committee vesting its authority in a subcommittee" 303 F. 2d, at 487.

See also *United States v. Kamin*, 136 F. Supp. 791 (D. C. D. Mass. 1956).

We need not consider whether the Committee, by express resolution, might have delegated all of its authority to the Subcommittee. It did not attempt this, nor did it otherwise specify the subject matter as to which the Subcommittee was authorized to act.¹² Accordingly, even if

¹² The action of the full Committee in reporting petitioner's contempt to the House, and the House's action in certifying the contempt to the United States Attorney for prosecution, cannot be

we were able to establish proper authorization by the Committee itself pursuant to Rule I to conduct the inquiry at which the questions were asked which petitioner refused to answer, this prosecution would fail. The jurisdiction of the courts cannot be invoked to impose criminal sanctions in aid of a roving commission. The subject of the inquiry of the specific body before which the alleged contempt occurred must be clear and certain. As Chief Judge Clark stated in *United States v. Lamont*, *supra*, at 315, it is necessary to "[link] the inquiry conducted by the subcommittee to the grant of authority dispensed to its parent committee."

Reference to § 192 emphasizes the importance of this requirement. The statute requires that a witness, to be found guilty of contempt, must have "been summoned as a witness by the authority of either House of Congress to give testimony . . . upon any matter under inquiry before either House" The authority being exercised is that of the House of Representatives. See *Watkins*, 354 U. S., at 200-205. It is the investigatory power of the House that is vindicated by § 192. The legislative history of § 192 makes plain that a clear chain of authority from the House to the questioning body is an essential element of the offense.¹² If the contempt occurs before a subcommittee, the line of authority from the House to the Committee and then to the subcommittee must plainly and explicitly appear, and it must appear in terms of a delegation with respect to a particu-

taken as retroactive authorization of the investigation and definition of the delegated authority. Petitioner's "duty to answer must be judged as of the time of his refusal." *United States v. Rumely*, 345 U. S. 41, 43.

¹² See Cong. Globe, 34th Cong., 3d Sess., particularly at pages 406, 409-410, 427, 435 (1857). See also *Watkins v. United States*, 354 U. S., at 178, 200-201.

lar, specific subject matter. As Judge Weinfeld stated in *United States v. Lamont*, *supra*, at 32,

"No committee of either the House or Senate, and no Senator and no Representative, is free on its or his own to conduct investigations unless authorized. Thus it must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it."

Absent proof of a clear delegation to the subcommittee of authority to conduct an inquiry into a designated subject, the subcommittee was without authority which can be vindicated by criminal sanctions under § 192, nor was there an authoritative specification of the "subject matter of the inquiry" necessary for the determination of pertinency required by the section.

For the foregoing reasons, the judgment below is

Reversed.

While concurring in the Court's judgment and opinion, MR. JUSTICE BLACK would prefer to reverse the judgment by holding that the House Un-American Activities Committee's inquiries here amounted to an unconstitutional encroachment on the judicial power for reasons stated in his dissent in *Barenblatt v. United States*, 360 U. S. 109, 135.